

**EUROPEAN COMMISSION:
DIRECTORATE-GENERAL FOR ENERGY AND TRANSPORT**

**COMMISSION STAFF WORKING PAPER
RIGHTS OF PASSENGERS IN INTERNATIONAL BUS AND COACH
TRANSPORT**

**A RESPONSE BY THE ASSOCIATION OF PERSONAL INJURY LAWYERS
(APIL14/05)**

OCTOBER 2005

The Association of Personal Injury Lawyers (APIL) was formed by claimant lawyers with a view to representing the interests of personal injury victims. APIL currently has around 5,000 members in the UK and abroad. Membership comprises solicitors, barristers, legal executives and academics whose interest in personal injury work is predominantly on behalf of injured claimants.

The aims of the Association of Personal Injury Lawyers (APIL) are:

- To promote full and prompt compensation for all types of personal injury;
- To improve access to our legal system by all means including education, the exchange of information and enhancement of law reform;
- To alert the public to dangers in society such as harmful products and dangerous drugs;
- To provide a communication network exchanging views formally and informally;
- To promote health and safety.

APIL's executive committee would like to acknowledge the assistance of the members of the Health and Safety Policy Working Group in preparing this response:

Richard Holt
Clive Garner

Executive Committee Member, APIL
Member, APIL

Any enquiries in respect of this response should be addressed, in the first instance, to:

Miles Burger
Policy Research Officer
APIL
11 Castle Quay
Nottingham
NG7 1FW

Tel: 0115 958 0585
Fax: 0115 958 0885

E-mail: miles.burger@apil.com

RIGHTS OF PASSENGERS IN INTERNATIONAL BUS AND COACH TRANSPORT

Executive Summary

- APIL is concerned that the details outlined by the European Commission in relation to establishing a new liability scheme for coach transport do not adequately describe the scope of injury which the scheme will cover. In particular APIL is anxious that psychological injury and issues relating to the health of a passenger should not be excluded from any such scheme.
- APIL believes that the mandatory schemes currently in place in the UK – as well as in the rest of Europe - are insufficient to meet the needs of international coach passengers who may suffer personal injury.
- APIL believes that any new international, or Europe-wide, liability scheme for coach passengers should reflect the liability schemes which are already in place in the air, train and maritime industries.
- APIL believes that there should be a threshold – based on the seriousness of the injury sustained by the coach passenger – below which defendants would not be able to contest claims. For example, claims made by passengers suffering serious injury or death would fall into this category.
- APIL supports the principle that people injured in a coach accident should receive advance payments.
- APIL reiterates its view that liability for road traffic accidents, including coach accidents, should be unrestricted, and therefore unlimited.

- APIL believes that the liability rules which should govern injuries sustained in a coach accident should be those of the claimant's country of residence.
- APIL believes that mobility equipment is hugely important, so it is vital that there is suitable compensation for passengers in instances where this equipment is lost or damaged during a journey.

Introduction

1. APIL welcomes the opportunity to put forward its comments on the European Commission's consultation - *'Rights of passengers in international bus and coach transport'*. Please note, however, that as APIL represents the interests of people injured through the negligence of others, our response will concentrate on the issue of liability and insurance relating to bus and coach transport.

Health and psychological injury

2. APIL is concerned that the details outlined in the consultation document - in relation to establishing a new liability scheme for coach transport - do not adequately describe the scope of injury which the scheme will cover. While reference is made to "*death or injury*"¹ in the document there is no definition of exactly what type of injury this refers to. APIL therefore feels that there needs to be further clarification about the exact scope of the scheme in order to prevent the unjust exclusion of some types of 'injury'. In particular we are anxious that psychological injury and issues relating to the health of a passenger should not be excluded from the scheme.
3. The reason for APIL's anxiety over these issues is that we have campaigned for their inclusion in the current air transport liability scheme, the Montreal Convention (1999). This convention - in unison with its predecessor, the Warsaw Convention (1929) – ensures that although airlines are responsible for the safety of their passengers, they have no corresponding responsibility for the health of them. This is problematic as in order to be able to claim compensation you have to have had an accident - it is not enough simply to have been made ill by the airline's actions. This means that Deep Vein Thrombosis (DVT) sufferers have to demonstrate that the thrombosis caused by long haul travel is an accident as defined by the 1929 convention.

This has frequently and consistently proved extremely difficult to do. APIL contends this inequality should be rectified by compensation being provided for both air accidents and other health problems caused by air travel (like DVT).

4. In addition, the Montreal Convention does not include compensation for psychiatric injury. APIL maintains that a person who manages to leave an airline accident alive could be just as psychologically scarred as a person who survives a road, rail, sea or train accident. Yet under the convention the aircraft survivor would not be entitled to compensation, whereas under the other transport schemes he would. APIL is therefore concerned that such a distinction should not be included with any new liability scheme for coach transport and passengers.

Consultation Questions

Question 5: *Are the mandatory insurance schemes already in place sufficiently adapted to the needs of international coach passengers? Should procedures be improved to help passengers in case of injury or death?*

5. APIL believes that the mandatory schemes currently in place in the UK – as well as in the rest of Europe - are insufficient to meet the needs of international coach passengers who may suffer personal injury. While there are several general systems of civil liability in relation to the use of motor vehicles at European Union (EU) level², and these may be satisfactory in many instances, there are still various national schemes of insurance which are not mandatory. Without the need for insurance to be mandatory, there is a possibility that injured people will be left either under-compensated or with no compensation at all. Outside of general road insurance schemes, there are no wide-ranging provisions at EU or international level

¹ Consultation document – page 8

² Established via various EU Motor Insurance Directives

governing contracts of carriage of passengers. Admittedly there is a United Nations Convention on the carriage of passengers by road, yet this has only been ratified by a small selection of countries. We therefore fully endorse the establishment of a scheme of civil liability for coach and bus travellers travelling in Europe as proposed by the European Commission.

6. In addition, with there being international agreements in relation to other forms of widely used passenger transport – i.e. air, train and maritime transport – APIL suggests there is a need for similar provisions in relation to coach transport. In particular there needs to be a system of civil liability in coach and bus transport which reflects the protection provided to other passengers who travel by air, rail and sea. We believe that the current European Commission proposal will provide this protection.

Question 6: *Should there be a liability system comparable to that in air, rail and maritime transport?*

7. APIL believes that any new international, or Europe-wide, liability scheme for coach passengers should reflect the liability schemes which are already in place in the air, train and maritime industries. In particular we agree with the proposal that coach operators should not be allowed to contest claims for death or personal injury below a certain threshold - i.e. a system of strict liability, with defendants having to disprove the assumption that they are liable. As with the other industries mentioned, this will allow injured people to be awarded compensation and damages while the investigation into the accident continues. We are also fully supportive of the awarding of advance payments – a practice which occurs in the rail and air industries, and which may be tackled in the forthcoming discussions concerning the maritime industry and the Athens Convention.

Question 7: *If so, up to which amount should coach operators not be allowed to contest claims for death or injury?*

8. As detailed above, APIL believes that there should be a threshold below which defendants would not be allowed to contest claims for death or injury. Rather than a financial threshold however, APIL suggests that it should be a threshold based on the seriousness of the injury sustained within the accident. For example, those passengers who have been seriously injured or killed will not have to prove, in the first instance, that the accident was the defendant's fault in order to receive compensation. This will allow these passengers, and their bereaved families, to obtain vital damages payments quickly and easily. In addition, this early settlement will enable those seriously injured to gain access to rehabilitation as quickly as possible – when it can be the most effective – while the families of the bereaved will have the necessary funds to replace those lost by the death of a possible wage earner. In terms of how this threshold would be defined, APIL suggests that a 'serious injury' is one which requires admission to hospital, for either mental and/or physical harm, resulting from the accident.

Question 8: *What should be the advance payment in the event of death or injury to passengers?*

9. APIL recognises that in the event of a serious injury or death, it is vitally important for the injured person or bereaved family to have compensation as soon as possible. We therefore support the principle of advance payments in the event of an accident. In terms of the financial amount of such advance payments, APIL proposes that the amounts detailed in relation to air transport should be duplicated in the coach transport liability scheme. This would mean that there would be a minimum advance payment amount for deaths resulting

from a coach accident of 16,000 SDR³ (approximately £13,183.13). This proposal, combined with the strict liability provision, means that injured passengers will be able to gain access to rehabilitation quickly and efficiently, without having to wait for either interim payments or the final settlement.

Question 9: *Should there be upper limits on liability or should it be unlimited?*

10. APIL reiterates its view that liability should be unrestricted, and therefore unlimited. This suggestion reflects APIL's previous submission in relation to the European Commission's consultation on the 5th Motor Insurance Directive⁴. APIL believes that it is imperative that those who suffer serious injuries as a result of coach accidents can obtain the compensation they need to meet, for example, medical and nursing expenses. This should not be hampered by the imposition of upper limits of liability. Some Member States, including the UK, require unlimited insurance cover on motor insurance and APIL believes this principle should be extended to coach liability. Indeed Member States should be able to require unlimited cover through national legislation, so that injured victims in those countries where compensation awards tend to be higher, as in the UK, are not affected or disadvantaged in any way.

Question 10: *In case of injuries suffered in Member States other than the State in which the journey began, which national liability rules should apply? Those of the country where the passenger bought the ticket or those of the place of origin or destination or transit? Where should passengers be able to file a lawsuit?*

11. APIL believes that the liability rules which should govern injuries sustained in a coach accident should be those of the claimant's country of residence. This would mean that if a person who is

³ Special Drawing Rights (SDR) (see <http://www.imf.org/external/np/exr/facts/sdr.htm> for details). Current value of an SDR is 0.687990 to the dollar (\$), while for every pound (£) you get \$1.754723. Therefore, the value of one pound (£) is 1.2072366 SDR.

resident in England is injured in Germany the applicable law would be English and not German law. In terms of the claim for damages and calculating the quantum of the claim, the rules of the individual victim's place of habitual residence should also be applied unless it would be inequitable to the victim to do so. This position reflects APIL's representation to the UK Government concerning the Rome II proposals about non-contractual obligations⁵.

Question 12: *Should there be special provisions for mobility equipment lost or damaged during a journey?*

12. APIL believes that mobility equipment is hugely important as it will – in many cases – represent the only way an injured or disabled person can get around. It is therefore vital that there is suitable compensation for passengers in instances where this equipment is lost or damaged during a journey. In addition, there needs to be a presumption that the coach operator will ensure that the passenger is suitably re-equipped – as quickly as practically possible – in order to continue his journey or return home.

⁴ APIL response – 'Commission of the European Communities – 5th Motor Insurance Directive' (August 2002) (see <http://www.apil.com/pdf/ConsultationDocuments/68.pdf> for a copy)

⁵ Letter - dated 02 March 2005 - sent to Ms Evdokia Zyrtidou (Department for Constitutional Affairs [DCA]) from APIL.