

Criminal Injuries Compensation Authority

Medical Process Project questionnaire



A response by the Association of Personal Injury Lawyers

Dated 21 October 2010

About APIL

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

APIL's executive committee would like to acknowledge the assistance of the following members in preparing this response:

Keith Barrett, Matthew Evans, Henrietta Phillips, Neil Sugarman, Jonathan Wheeler,

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

Helen Blundell, Legal Information Manager

APIL, 11 Castle Quay, Nottingham NG7 1FW.

Tel: 0115 958 0585; Fax: 0115 958 0885. E-mail: mail@apil.org.uk

Thank you for allowing APIL the opportunity to take part in this process. We are unable to answer all of the questions posed, but set out below the detail of our responses to those where we have relevant evidence.

Responses

- **Your opinion on applicants approaching GPs or consultants directly for a report on the injuries sustained;**

Last year, the CICA introduced a scheme whereby applicants had to obtain their own discharge notes from Accident and Emergency departments, to forward to the CICA. This initiative failed: applicants found it very difficult to deal with such bureaucratic organisations and the scheme was abandoned by the CICA.

We take the view that this proposal has exactly the same inherent problems – applicants – all of whom have recently been innocently involved in a frightening assault or other crime – will simply find it too much to have to approach, instruct and possibly chase up a GP or consultant for a report on their injuries. Many applicants will be children or vulnerable adults – it is simply unacceptable to expect them to have to conduct their own claim in this way, and they will be unable to do so, in our opinion.

Applicants will have to write to the medic concerned – even a covering letter will be daunting to many - and the net result will be that the typical applicant will be dissuaded from pursuing a claim.

We are also concerned that if the applicant then fails to follow up and remind the medic that their report is due, then the CICA will strike out the claim for non-co-operation. Not many private individuals, especially those who have recently been involved in a traumatic experience, will think to maintain a diary system in order to send reminders to medics. Any system would require a 'follow up' procedure in place to remind applicants to chase up their outstanding reports, and we see no cost saving in that, compared to the current system where the CICA chases up the medic direct.

The CICA currently bears the cost of obtaining these reports – will the CICA be reimbursing the applicant for the fee paid? Would there be an agreed standard fee, or will applicants be at the mercy of the current market rates for reports?

If not, then most applicants will be dissuaded from continuing with their application – it is unacceptable for anyone on benefits or a low income to have to fund the claim in this way.

We question whether the CICA has discussed the impact of these proposed changes with the BMA or local medical councils. We cannot see how these changes would be welcomed by either organisation.

- **In order to maintain consistency in the information requested, CICA would provide a standard medical report pro-forma for applicants to pass to the medical authority. Your views on this option would be appreciated;**

The perennial problem with CICA experts comes down to two things: an unwillingness or inability to pay medics the going rate for producing a decent report and the persistent use of a pro-forma for obtaining medical evidence.

Medics are currently sent a proforma by the CICA which has limited space and the experts cram their answer on to that. The CICA only pays a small fee, so there is no incentive for them to do any more.

As long as the existing pro-forma continues to be used, it will result in inadequate and unsatisfactory medical reports. APIL would offer to assist with the production of a revised pro-forma, which would be of more assistance to all involved and which the CICA could use now, even without implementing these proposed changes.

- **Where the solicitor obtains and pays for the medical information on behalf of the applicant, the applicant will, naturally incur an additional solicitor's administrative fee on top of the medical fee. Where the applicant is capable, would you object to the CICA contacting them directly to source the medical report, keeping their costs and the solicitor's work to a minimum?**

No. The protective relationship of confidentiality in the solicitor-client relationship should not be overridden by the Authority. At present, represented clients who are inadvertently contacted directly by the CICA advise our members that such contact is both confusing and distressing for them.

- **In instances where it would not be appropriate for CICA to contact the applicant directly, would there be room to agree a capped or standard administrative fee with your members; and how could this be agreed?**

This question illustrates the CICA's lack of understanding of the solicitor/client relationship. Any fee charged by the solicitor for work done on behalf of the client is a matter between the solicitor and client and we view this suggestion as an attempt to interfere with the solicitor/client relationship. Law firms are regulated very strictly by the Solicitors Regulation Authority and the client has many rights if he or she is unhappy about those fees.

- **We would also provide guidance for completing forms on our website. Would this be acceptable?**

Internet access is not universal in the UK population.

According to the latest figures compiled by the Office for National Statistics, internet use is linked to various socio-economic and demographic indicators, such as age, location, marital status and education. For example, a majority of those aged 65 and over (60 per cent) have never accessed the internet, compared with just one per cent

of those aged 16 to 24. While 97 per cent of adults educated to degree level have accessed the internet, 45 per cent without any formal qualifications have done so. When adults were asked why their household did not have an Internet connection, 21 per cent said that a lack of skills prevented them from having the Internet.

For this reason, any guidance for completing forms on the CICA website must also be made available in non-internet formats.

- **How do you think these proposals would affect various applicant groups within your remit (including those classed as 'vulnerable', or who would need assistance in obtaining medical information directly from their own medical practitioner)?**

It is ironic that the CICA is at this very moment contemplating changes to the way it pays awards to applicants, which will ensure that fewer and fewer solicitors will take on such claims, for fear of not being paid for the work they have done. Yet at the same time, the proposals in this questionnaire will undoubtedly adversely affect various applicant groups as we have already described in our responses above.

For the avoidance of doubt, we repeat those concerns here:

- Applicants – all of whom have recently been innocently involved in a frightening assault or other crime – will simply find it too much to have to approach, instruct and possibly chase up a GP or consultant for a report on their injuries.
- Many applicants will be children or vulnerable adults – it is simply unacceptable to expect them to have to conduct their own claim in this way, and they will be unable to do so, in our opinion.
- Applicants will have to write to the medic concerned – even a covering letter will be daunting to many - and the net result will be that the typical applicant will be dissuaded from pursuing a claim.

- If the applicant then has to follow up and remind the medic that their report is due, then there is a substantial risk that the CICA will strike out the claim for non-co-operation.
- The CICA currently bears the cost of obtaining these reports. There is no suggestion in this paper that the CICA proposes to reimburse the claimant for the cost of the report. Most applicants will be dissuaded from continuing with their application – it is unacceptable for anyone on benefits or a low income to have to fund the claim in this way. In standard personal injury claims, the vast majority of claimants would never pay for their experts reports direct in this way and CICA claimants should not be treated any differently.
- **Any additional comments;**

Medical reporting is fundamental to the proper operation of the Scheme and achieving fair and proper outcomes for applicants. We would welcome a wider discussion of these issues with the CICA and are keen that any changes are not rushed through for reasons of financial expediency, resulting in many injustices.

APIL will be meeting the CICA on 26 October and perhaps these issues can be discussed then.

21 October 2010.

For more information about this response, please contact in the first instance:
Helen Blundell, Legal Information Manager.

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- ▶ 11 Castle Quay, Nottingham, NG7 1FW • T: 0115 958 0585
- W: www.apil.org.uk • E: mail@apil.org.uk