Extension of the RTA scheme to include employers' and public liability claims up to the value of £25,000- A call for evidence

A response by the Association of Personal Injury Lawyers

25 May 2012

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation with a 20-year history of working to help injured people gain access to justice they need and deserve. We have around 3,800 members committed to supporting the association's aims all of whom sign up to APIL's code of conduct and consumer charter. Membership comprises mostly solicitors, along with barristers, legal executives and academics.

APIL has a long history of liaison with other stakeholders, consumer representatives, governments and devolved assemblies across the UK with a view to achieving the association's aims, which 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.

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

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Executive Summary

- The Government timetable for these reforms appears to be compromising the process, as it allows for insufficient time for independent data analysis, no time for proper procurement processes of new IT and inadequate build and testing time.
- There is sense in extending the RTA portal first, whilst building an EL portal for launch at a later date. This would allow for a better product to be built and remove some of the risks resulting from rushed development.
- The full evaluation of the process which was promised in Professor Fenn's report has not been delivered.
- The foundations on which the RTA system were built, namely compulsory insurance, direct right of action against an insurer and an insurance database like askMID have been ignored in proposals for portals for EL and PL. Indeed, the current database of EL insurers needs improvement to work effectively in a portal environment.
- Each reform should be delivered as a package. A protocol without a fully functioning IT portal will not deliver efficiencies.
- The current RTA fixed fees were agreed by stakeholders. Simply reducing the fixed fee already agreed by the industry because of Government's commitment to banning referral fees, is misconceived and illogical. Paying referral fees is only one means of obtaining business. Only 44 per cent of personal injury firms use referral fees[1].Those firms currently paying referral fees will have to shift to other marketing models once the ban is introduced. All marketing costs money.
- It is difficult to propose any fee without knowing the full data available to Professor Fenn's report.
- The perception that reducing cost will deter fraudulent claims is wrong. Reducing costs will simply erode access to justice for genuine claimants.
- It is uneconomic to agree a single fixed fee on all cases from £1,000 to £25,000. The work must be independently costed and discussed with claimant representatives and compensators. The industry should agree a fee rather than a fee being fixed by Government. Other cost structures such as staged costs should be considered.
- The higher the value of claim, the more work involved and consequently the higher the fee should be, ensuring that there is no shortfall in costs to be recovered from the client.
- Insurers are already making cost savings of £275 million a year from the process for lower value RTA claims.

[1] Law Society Strategic research Unit.

- Additional savings for insurers in the region of £52 million a year will be realised when insurers are no longer paying success fees on RTA portal cases.
- The work involved in assessing whether employers' liability and public liability cases have merit in stage one is considerably more than for a RTA case.
- There should be three protocols and not one.
- There must be access to the Bar for quantum advice.
- Extending the process to include RTA,EL AND PL cases up to £25,000 will require amendments to the following sections of the protocol:
    - Expert evidence
    - Special damages
    - Interim payments
    - Greater access to rehabilitation
    - The provision for witness statements
    - Access to the Bar
    - Amendments to Stage three- including additional time for oral hearings and witness statements to assist judges with decision making
    - There are substantial issues surrounding disease cases, such as apportionment and causation that require serious consideration.
- The Government timetable for this work is unachievable and if these issues are not resolved we question the sense in pursuing this work further.
- The portal should be linked to the Insurance Fraud Bureau data so there is an industry sharing of information with both sides better equipped to fight fraud.
- Whilst there is sense in sticking to the current portal for RTA cases, there should be an open tendering process for a portal for EL and PL cases.
- High exit rates undermine the current portals success, and present a risk to the development of further portals. 48 per cent of cases exit the portal without resolution. The majority of these leave the process because of the insurers' failure to respond.

Introduction

Whilst APIL is willing to engage in discussions around extension of the portal, we have serious concerns at the speed with which these reforms are progressing. In particular, the aggressive timetable appears to be compromising the process, as it allows insufficient time for independent data collection and analysis, no time for proper procurement processes of new IT and inadequate build and testing time for new systems. Such steps would typically lower the need for a major change programme at a later date. Without these steps, we fear the measures will fail.

In February 2012 when the announcement was made to increase the financial limit of the road traffic accident scheme to £25,000, the Government response stated that

"consideration will be given to the timing of the extension, following a full evaluation of the existing RTA PI scheme, following which we will publish our final impact assessment of the proposed extension"[2]. Since then, and before the end of this current consultation with stakeholders, it has been announced that:

1. Protocols for vertical and horizontal extension of the portal can be delivered by summer 2012;
2. Implementation of these reforms will take place in April 2013;
3. Instructions have been put in place with software programming company, CRIF, to start writing the programme specification for extension.

Lawyers at the Ministry of Justice (MoJ) have already drafted protocols and rules for consideration by the Civil Procedure Rules committee in advance of the consultation period closing. The meeting at which these rules will be considered by the committee is in advance of the deadline for this submission. This important meeting is occurring independently of the consultation process and will not have the benefit of wider input before committee members draw conclusions.

What has happened to the full evaluation of the current scheme and impact assessments which were promised? We know from the MoJ's response to our Freedom of Information Requests[3] that Professor Fenn was commissioned to examine the full effects of the portal prior to any extension. In particular the MoJ stated that it wanted to know the effects of the process on settlement times, level of damages, the number of cases reaching trial and whether there has been any issues affecting access to justice[4]. Professor Fenn presented the preliminary findings of the RTA portal evaluation to the Portal Co Board on 15th July 2011. The report was to be made available to the MoJ in September 2011[5]. Despite requests for the report, it has not been released. The data in this report is now over a year old and without this report confirming that Government objectives have been met, namely, settlement times have reduced and the level of damages has not reduced, The Government has not made out its case for reform.

Data provided by Professor Fenn[6] for Lord Justice Jackson's Legal Action Group annual lecture 29 November 2010 showed that 75 per cent of RTA claims settled were under £5,000. A further 14 per cent were settled between £5,000-£10,000. In total, 89 per cent of all RTA claims were capable of being settled within the portal. Fenn's data showed that extension of the portal to £25,000 would bring a further seven per cent of claims into the remit of the portal.

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[2] Solving disputes in the county courts: creating a simpler, quicker and more proportionate system. The Government response February 2012, page 10

[3] May 2012

[4] MoJ Business case for procurement of consultancy and interims. Section one- Executive summary

[5] Ibid Section two- Objectives

[6] These figures relate to a breakdown of the numbers used within Lord Justice Jackson's Civil Litigation Costs Review, wherein Professor Fenn analysed a sample of 63,998 personal injury cases - see http://www.judiciary.gov.uk/NR/rdonlyres/FFEA965E-2A7F-4A1E-881E-3FC58483EA99/0/jacksonljcivillitresponse.pdf, pages 18 - 21

The current portal is the entry point for 89 per cent of RTA cases. High exit rates in excess of 47 per cent mean that in reality, only half settle within the portal. It is right that the portal does not exactly reflect the Jackson data, as it only captures simple claims. Data indicates that 97 per cent of claims settled in the portal are under £3,500. Only three per cent of claims settled in the portal are between £3,500–£10,000. Data from Portal Co indicates that 50 per cent of claims settle at £1,965 or below. In reality, the data does not particularly support the argument for extension of the portal upwards, as it is simply not being used for higher value claims. Put simply, the majority of the claims in the current portal are under £3,500.

Worryingly the Government is not delivering what it has promised; there is also a blatant disregard for the detail. The Government appears to be acting irrationally and unreasonably failing properly to consult and is embarking on what appears to be a cost fixing exercise at the request of insurers. We know that agreeing a process and developing a suitable IT system takes around 18 months. Rushing changes through for April 2013 implementation is unrealistic and, more worryingly, damaging to access to justice. We know from experience that rushing the development of the portal software results in additional cost. Implementation of the RTA process under tight timeframes imposed by the MoJ last time means that claimant and insurer representatives are still working collectively to make the portal reflect the protocol.

What is also being ignored in the Government's haste for further reform is the foundation on which the original RTA streamline process was built. As part of the RTA scheme the insurers agreed that if they were listed as the insurer for a particular vehicle on the database they would deal with the claim. Every driver of every vehicle on the road in the United Kingdom is required to have road traffic insurance. The current scheme works because the claimant can search for an insurance policy applicable to the relevant defendant and notify their claim directly to the appropriate insurer. When a vehicle is insured the insurance policy is notified to the Motor Insurance Database (MID). The information collated by MID is incorporated into the website askMID which was developed to allow victims of road traffic accidents to trace an insurer quickly. Where the driver is uninsured then the Motor Insurers Bureau will deal with the claim.

In RTA cases there is a direct right of action against the insurer. This only exists in relation to road traffic accidents in our jurisdiction and is there because it is required by a European Directive. The European Communities (Rights Against Insurers) Regulations 2002, enact the Directive in the U.K. This is what enables claims in the claims process to be dealt with quickly and efficiently by the insurer. It also allows the insurers to be sued without involving their insured at all. Before these latest reforms are taken forward a direct right of action against the insurer in EL and PL cases is also required. If the process is to be extended without such a right, one of the fundament elements will be missing and insurers will be unable to deal with cases without specific instructions from their insured in all cases at each and every step. The effect will be to block up and slow down the entire system.

Whilst it is a requirement for employers to have EL insurance[7], PL insurance is not even compulsory. At the moment there is the start of an EL database. The Employers' Liability Tracing Office, which is currently in operation, holds incomplete data and anecdotal evidence suggesting that its success rate is only 70 per cent. At our annual conference in April 2012 Nick Starling, Director of General Insurance and Health at the Association of British Insurers, indicated that he was equally unsure of how well it is working.

There is also no fund of last resort for EL or PL claims. Therefore where the potential defendant is uninsured, there is no process akin to the MIB to deal with these claims. An insurance based portal cannot work without all these things in place.

We must not have piecemeal implementation of these reforms. A protocol without a fully functioning IT portal will deliver none of the objectives or efficiencies on which the current process was built. The objective of this process was to ensure that the injured person could receive his rightful compensation more quickly, whilst reducing unnecessary costs and delay in the system[8]. This was delivered through development of a fixed streamline process following cross industry discussions. The process incorporated strict time limits and to ensure these time limits were met. Processes were quicker and an IT solution was devised to strictly impose these time limits. The protocol and portal come as a package and unless both are delivered together, the extension to which the Government has committed will not be delivered.

In addition, announcements by the Minister indicate that the small claims court limit could be increased. If this is the case we question why the portal work is being conducted at all because any decision to increase the small claims limit would effectively empty the portal of all its existing claims because we know from Professor Paul Fenn that 97 per cent of claims which settle in the portal settle for under £3,500[9]. It is impossible even to begin discussions on the fixed fee when it is not clear whether that fee will apply to cases of £1,000 to £10,000 or £5,000 to £10,000.

Our response to the questions below is on the basis that the small claims limit is not increased. If the limit is raised the basis on which the claims process is being developed will be fundamentally flawed. The basket of cases within the process and the fixed costs set for that basket of cases will need to be reworked, as increasing the small claims limit to the levels indicated in the press will remove in the region of 97 per cent of cases which settle in the portal, plus the many that currently settle

[7] Employer's liability (Compulsory Insurance) Act 1969
[8] Case track limits and the claims process for personal injury claims. The Government response 21 June 2008
[9] These figures are based on additional data analysis of data by Prof. Fenn used within Lord Justice Jackson's Civil Litigation Costs Review, wherein Professor Fenn analysed a sample of 63,998 personal injury cases - see http://www.judiciary.gov.uk/NR/rdonlyres/FFEA965E-2A7F-4A1E-881E-3FC58483EA99/0/jacksonljcivillitresponse.pdf, pages 18 – 21

outside the portal at the bottom end of the limit, thus the assumptions on which the process was developed would be flawed.

1. The level of fixed recoverable costs you think would be appropriate at each stage of the process for RTA claims and those arising from employer and public liability accident claims and any evidence you can provide to support your views.

RTA claims

The current fee

The current fixed fees were agreed following stakeholder discussions and negotiations. They were developed with costs being fixed according to the appropriate level of fee earner and the time spent completing each element of the process. That time was then cross referenced with guideline hourly rates and a blended hourly rate applied to reflect the rates current at that time. There was no reference made to referral fees or marketing costs during the negotiation period. Guideline hourly rates, for all firms, include an element for marketing as that is a permitted overhead along with salaries, property rental and professional indemnity insurance. The fees were fixed at an appropriate level for the work involved and to ensure that they remunerated the lawyer for the work undertaken ensuring that there was no shortfall in costs to be recovered from the client. There is no evidence that the costs are too high; they are only being reviewed because insurers have said that this is the case.

The Prime Minister has already given a commitment to reducing the fee for RTA cases without waiting for the conclusion of the consultation[10]. Simply reducing the fixed fee already agreed by the industry because of Government's commitment to banning referral fees, is misconceived and illogical. Not all claimant solicitors pursuing RTA claims on behalf of injured people pay referral fees. We know from the REGIS figures 2010/11 that only 44 per cent of personal injury firms use referral fees[11] and from the Legal Services Consumer Panel research, less than half of all PI lawyers pay referral fees[12]. Solicitors are free to obtain business in many different ways, advertising individually, marketing collectively on the TV, internet and radio or in the press. Paying referral fees is only one means of obtaining business. Those firms currently paying referral fees will have to shift to other marketing models once

[10] 14 February 2012 Downing Street Summit. "Ministers will reduce the £1200 fee that a lawyer earns through low value personal injury claims".
[11] Law Society Strategic research Unit
[12] Legal Services Board Consumer Panel. Referral arrangements, May 2010, page 13

the ban is introduced. All marketing costs money. Our members report that the marketing spend is largely similar for those who carry out their own marketing rather than paying referral fees. There is, therefore, only a transference of spend, rather than a saving.

We know the insurers' unstated aim is to cut lawyers out of the process. They are doing this in two ways: asking Government to cut costs to a level which cuts out lawyers trained to provide independent advice; and secondly through 'third party assistance'. The Government seems happy for access to independent legal advice to be eroded to the detriment of the injured person. Insurers must not be allowed to settle these claims. We know from the Financial Services Authority report[13] only three per cent of third party capture offers are rejected, but when injured people obtain independent advice they were awarded 274.95 per cent or £1,003.07 more in comparison. The Law Society Gazette reported only on 17 May 2012 that insurers were still trying to under settle claims and remove independent advice from the process[14].

It is important that consideration is given to geographical diversity of firms running these cases. It must not be the case that only large firms can invest in the technology and volume of cases needed to run these cases profitably. There is a danger that big business will succeed at the expense of the smaller one. In Wales, for example, Welsh is still the main language of the rural communities and it is far more likely that solicitors in those areas will be able to communicate in Welsh with injured people, rather than the larger urban firms. These cases are still pursued by small high street practices on behalf of their clients; reducing fees is highly likely to put these firms out of business.

It must also be remembered that there is an irreducible amount of work that is involved in all the cases. The Solicitors Regulation Authority requires lawyers to know their clients and provide advice on funding their claims at the outset of the case. This requirement will become more onerous after the implementation of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act in April 2013. Lawyers will be required to advise their clients on all funding options including conditional fee agreements and damage based agreement. They will also be required to discuss the level of potential success fee with the client what the implications of that on the client's damages. They are also required to carry out money laundering checks, ID checks, conflict of interest checks and bankruptcy checks. There is also a duty on the solicitor to manage a client's expectation and therefore routinely update them on the progress of their case. All this is in addition to providing advice on a case.

[13] FSA third party capture risk report 2009

[14] Law Society Gazette 17 May 2012 Letters to the editor-Naive strategy, Boris Kremer

Cases valued over £10,000

There will be additional work involved in pursuing a claim up to £25,000, including complexities relating to losses associated with the injury, for example, loss of pension, the need for care reports and accountants. There is also often the need to assess disadvantage on the labour market which is client specific. The greater the injury the greater the quantum, but also linked with this is the longer period of time that it will take for the injured person to recover from the effects of their injury or reach a significant enough plateau to arrange medical reports. In cases where damages exceed £10,000 there is a far greater likelihood that the effects of the injury will be significant and permanent. There will also need to be provision for the recovery of disbursements for counsel's advice on quantum, care reports, pension advice and accountants.

APIL conducted research of its members in March 2012[15] seeking information about their last two settled RTA cases where liability was admitted and where damages were valued between £10,000 and £25,000. The data showed that the average damages awarded was £15,100. The complexities involved in those cases included more than one medical report in 59 per cent of cases, ongoing medical conditions in 50 per cent of cases and rehabilitation in 44 per cent of cases. The main types of injuries suffered were soft tissue injury (78%), fracture (56%) and psychological injury (47%). The average time spent on these cases was just under 30 hours work. The more complex the injury, the longer the file is likely to remain open, the more work that is involved in advising the client on the case and managing their expectations.

Fixing a fee

We are asked to consider what the appropriate level of fixed fee should be for each stage of the process. It is important to go back to basics. It is difficult to propose any fee without knowing the full data available in Professor Fenn's report. The current fee, as explained above, was agreed between insurers and claimant representatives prior to the claims process being implemented. The work was based on a number of assumptions. In reality, two years of operating the scheme means that we are now better equipped to gather data and cost this work properly.

A representative sample of data shows that the profit on an average portal case is currently 14 per cent. LASPO Act will prevent any success fee (currently fixed at 12.5 per cent) from being recovered from the responsible party. Whilst the Act offers the lawyer the chance to recover the success fee from the client, in practice, competition will eradicate this practice. Indeed, the Government predict this to be the case. Unfortunately, this directly relates to a loss of income to the lawyer, reducing it to just 4 per cent. It is difficult to see with the majority of firms where there is potential

[15] Appendix 1

to provide further cuts in fees. Undoubtedly, some PI firms using A2A case management software can complete portal cases quicker, but not all claimant firms or insurers have the benefit of this management software. It is important to maintain diversity in the market, and local access to justice in smaller firms is important. These firms will not have the caseload and turnover of larger firms and cannot therefore match the efficiencies. It is simply not acceptable to fix a fee for firms able to invest in A2A software; consumers are entitled to a choice.

The number of hours work taken to resolve a case within the RTA protocol for low value RTA cases varies at present from 6-14 hours, depending on complexity and speed of offer from the insurer. The average time taken for resolution, based on a sample of over 450 cases, is 10 hours. Cases where there are pre-medical offers which settle at stage one are undoubtedly at the lower end of the stage and are cheaper to run. We understand anecdotal evidence suggests that in some firms and insurance companies that pre-medical offer make up to 25 per cent of offers in the portal. This practice removes the checks and balances from the process, and should not be encouraged further by setting the fee too low. Settling cases in such away will result in compensation not being properly assessed. We need to price a robust product, not the cheapest one available. This research suggests that the current figures are not too high.

It is simply uneconomic to agree a single fixed fee for cases between £1,000-£25,000. It seems clear that we will have to move to a multiple fee system for portal cases. We are also open to discussing whether stage one and stage two costs should be paid on conclusion of stage two to help stamp out the “400 pound club”. We see two options: staged fixed fees or fees as a proportion of damages.

Staged Fixed Fees

We are interested in exploring the concept of staged fees, but it is important to be able to see the spread of damages and case numbers in order to set the stages appropriately. We would be able to progress discussions on this further once the detail of the Fenn report is available. It appears at present that these stages would need to be quite small, because the spread of damages in the portal is in the main between £1,000 –£3,500.

Fees would increase accordingly with each stage. For example, a fee for cases settling between £1,000-£2,000, £2,000 - £5,000, £3,500- £5,500 etc. Despite the size of the portal, the spread of damages is relatively small at present. Consequently, the stages need to be smaller than initially predicted.

Advantages:

- It reflects the reality that complexity increases with damages
- It prices the lower value cases more proportionately

- It ensures access to justice for higher value cases
- It encourages claimant lawyers to settle for the right amount, rather than the first offer

Disadvantages:

- Claims will be more hard fought where the claim is valued close to a stage point

Fees as a proportion of damages

Another approach is that a base fee could be agreed for cases worth £2k or less, and then a percentage uplift added as a proportion of damages for cases settling for in excess of £2k. This model was used in the fixed recoverable costs or predictable cost regime[16].

Advantages:

- One fee structure that works across the range of £1 – 25k
- It reflects the reality that complexity and time spent increases with damages
- It prices the lower value cases more proportionately
- Transparent and easy for the client to understand the solicitor rewarded for effort
- It ensures access to justice for higher value cases
- It encourages claimant lawyers to settle for the right amount, rather than the first offer
- It mirrors the approach recommended by Professor Fenn in Annex 5 of the Jackson report[17]

Both approaches should ensure that low value cases cost less. This will deliver a saving to insurers without affecting access to justice.

How should the fee be agreed?

Cases should be independently costed and claimants and compensators provided with data sets prepared by an independent academic around which they could commence proper discussions to agree a new fee structure and price. This worked well previously, and leads to a greater acceptance by all parties of the outcome. There has not, as yet, been an independent study of the time taken to undertake a portal case with varying levels of damages.

[16] Civil Procedure Rules Part 45 II Road Traffic Accident- Fixed recoverable cost
[17] Lord Justice Jackson- Review of Civil Litigation costs: Final report December 2009 Annex 5 page 538 & 539.

It is surely for the industry to set the fee, not the Government and meetings should, therefore, be set up for fee negotiation as before. These meetings cannot take place, however, until the data from Fenn's report is available, for reasons previously stated.

Cost savings for insurers

The insurance industry has already made significant savings from these reforms as each portal claim is saving the insurance industry at least £800 per case[18], delivering a saving to the insurance industry of £275 million a year[19].These savings have not yet been passed on to policyholders.

In addition to this, with the LASPO Act reforms there is likely to be additional savings of £52 million per year[20], for RTA portal cases as insurers will no longer be paying the success fee of £150 a case. This is of course in addition to any savings they make from not having to pay after the event insurance costs. Unfortunately, this directly relates to a loss of income to the lawyer as lawyers' fees are already being cut in reality by £150 per case. Attacking cost levels further could result in a reduction in the quality of service, quality of case handlers and potentially result is a reduction in damages. Professor Fenn was commission to check whether damages had reduced as part of his review for the MoJ, again without this report we are unable to say with any certainty that this is not happening.

These savings alone make a total saving per year for insurers of potentially £327 million in current portal cases all without reducing fees further. There is also the potential for savings to be substantially more if insurers respond to time limits in the portal within the specified timeframe.

Employers' liability and public liability cases

Until the process is agreed it cannot be costed. The work involved to assess quantum in EL and PL cases will be similar to that involved in higher value RTA cases. This work will include allowance for additional medical evidence more frequent interim payments; quantum advice from counsel, witness evidence and non medical expert evidence.

The work involved in assessing whether an EL/PL case has merit is considerably more than that involved in an RTA case. In the majority of RTA cases the circumstances of the accident are straightforward e.g a rear end shunt into a stationary or slow moving vehicle. In an EL claim, for example, the work will be

[18] It can't go on like this- An interim report into affordable car insurance
David Ward MP page 18 ABI's Policy Advisor, Rob Cummings, stated *"the recently developed RTA PI scheme had been successful in reducing costs, bringing down the average legal cost from around £2,000 to around £1,200"*
[19] Appendix 2
[20] Appendix 3

significantly more involved and will require an experienced fee earner with detailed knowledge of the regulations and case law. Detailed enquiries will need to be made into how the accident occurred and what training the claimant had received, the level of supervision that was provided, whether protective equipment was provided. This level of detail will be required to determine if the case has merits and to ensure that the claim is not fictitious or frivolous. This is before the case even enters the portal.

Funding discussions will also be more detailed post LASPO implementation as the potential funding options will be varied. We know that EL cases are more complicated, the current fixed success fees (based on research) shows this by providing a fixed success fee of twice that for RTA cases. By entering into a conditional fee agreement with a client on these cases the solicitor may be asking the client to contribute some of his damages to the cost of pursuing the case. This too will require in-depth discussion.

Public liability cases are varied. If the portal was to be limited to claims against local authorities, the types of claims could still be varied and include highway trips and slips, abuse claims. The level of investigation at the outset of the claim will again be detailed to ensure that there is sufficient information to make sure the case has merit. It is also likely that the level of information on the Claim Notification Form (CNF) will be detailed to ensure that defendants have sufficient information to respond within current time limits.

2. What, if any, modification would need to be made to the pre-action protocol and the electronic portal for claims in the value of between £10,000 and £25,000.

a. What time limits might need to be revised in light of the RTA extension to £25,000?

b. Given the extension to £25,000, do RTA interim payments need to increase in value and frequency?

Extending the protocol[21] to include cases up to £25,000 will inevitability include more complex injuries such as minor brain injuries, moderate psychiatric damage, regional pain syndrome, fractures, dislocation and exacerbation of pre-existing conditions. In addition to the more complex nature of the injury there will also be complexities relating to losses associated with the injury, for example, loss of pension, the need for care reports and reports from an accountant. Rehabilitation also becomes more important because of the more serious nature of the injury received.

[21] Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents

Pre-action protocol

The only changes required to the introduction, general provisions of the protocol and stage one, are administrative ones, for example, changes to the financial limit in the preamble and scope. Time limits do not need to be changed as the liability investigation in an RTA cases will be the same regardless of value. The additional work and complexity will arise at stages two and three.

Stage two will require more detailed changes to the protocol, including changes to the section relating to medical evidence and interim payments. There will also need to be changes to stage two settlement pack form RTA5 and procedural changes to stage two to allow for medical, evidence quantum advice from counsel, witness evidence and non medical expert evidence.

There is sense in extending the RTA portal first, whilst further considering the issues that need to be overcome for EL and PL cases. This would allow for a better product to be built and remove some of the risks resulting from rushed development

Expert evidence

Although there is nothing specific in the protocol or civil procedure rules relating to the obtaining of medical notes, the MoJ-issued guidance[22] to practitioners states that medical records should only be obtained where requested by the medical expert and only then would the cost of obtaining these records be recoverable. When extending the protocol to include more complex injuries, medical notes including x-ray films and MRI scans will be required as a matter of routine; this change will need to be made to the protocol.

The protocol currently allows for the claimant to obtain medical expert evidence but there is an expectation[23] that medical evidence will be confined to one or two experts. Claims valued at more than £10,000 are likely to involve multiple injuries which may require more than two experts. In these cases it would be impractical to wait for an expert to recommend that further medical evidence should be obtained from an expert in another discipline[24] and under the current protocol wording[25] not waiting for such a recommendation could impose financial consequences on the claimant.

The protocol is silent on obtaining non-medical expert evidence such as care reports, loss of pension claims and accountant reports. In higher value cases, however, the provision of such reports will be necessary to provide the client's loss. Recovery of disbursements for such reports is not currently allowed under CPR part 45.30 (2) and will require amendment.

[22] Frequently Asked Questions Low Value Personal Injury Claims in Road Traffic Accidents 11 March 2010
[23] Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents paragraph 7.4
[24] Ibid paragraph 7.5
[25] Ibid paragraph 7.24

Interim payments

The current rules on interim payments prevent a claimant from being able to request a payment without first having a medical report which recommends a further medical examination[26]. In higher value claims, the claimant will often be suffering ongoing loss of earnings claims and paying for treatment or medication. In these cases an interim payment may be required which can be evidenced before the medical evidence is available. The protocol will need amending to remove the condition for a medical report to be obtained first and to allow for interim payments to be made to repay ongoing special damages. Interim payments must also increase in frequency and in value.

Special damages

Changes will need to be made to the settlement pack Form RTA5. Currently the form does not include heads of loss, such as loss of chance, loss of pension, disadvantage on the labour market (*Smith v Manchester* awards) and whilst they could be included under "other", the form does not provide space for sufficient detail. There is also no provision within the protocol for witness statements to be included to support claims for care and to provide details of claims injuries. This will be more pertinent in higher value cases as these will include claims involving care, exacerbation injuries and multiple injuries. In the case of an exacerbation injury it will be necessary for the claimant to provide evidence in the form of a witness statement, detailing the extent to which the injuries affect his day-to-day living. If the protocol does not include provision for this additional complexity cases will drop out of the process.

In addition, there is currently no box for an interest calculation. This will also need to be added to the settlement pack.

Advice from counsel

It is essential that the rules are re-written to stipulate that advice on quantum can be obtained from the Bar. The claimant should be allowed access to advice from the Bar at stage two to provide independent advice on quantum. We have said above that attacking cost levels further could result in a reduction in the quality of service, quality of case handlers and potentially result is a reduction in damages. Allowing advice from counsel at stage two will protect damages from being driven down. CPR part 45.30 will need amending to allow advice from counsel to be a recoverable disbursement.

For RTA cases under £10,000 the disbursement would only become payable on the basis of an 'added value trigger', namely if the quantum advice received from

[26] Ibid paragraph 7.7

counsel produces a higher settlement on negotiation or award at stage three than the insurer's initial offer.

For RTA cases over £10,000 the trigger should be where the difference between the claimants and defendants offer is five per cent or more. The appropriate fixed fees for the disbursement could be agreed with the Personal Injury Bar Association.

Stage Three

This will need revising for higher value cases. There is currently no provision within the rules for the client to give evidence at stage three, either by way of statement or oral evidence. We understand from our discussions with the Association of District Judges that they would welcome witness statements at stage three to assist with their decision making. It is not always obvious on the face of the papers whether or not the initial prognosis has been borne out or not.

In addition, sufficient time needs to be allowed for any oral hearing. The time currently allowed is around 45 minutes; this will be insufficient for more complex quantum disputes.

Portal

We would recommend linking the portal data to the Insurance Fraud Bureau data. This will allow claimant lawyers to access data ensuring that they have an early indication of any warnings within the system. Linking the two will also ensure that data captured by Portal Co is shared. Fraud indicators should also be shared with both sides of the industry.

IT

Whilst the changes in the rules will require minor changes, changes to the IT solutions coding to ensure that the portal reflects the rules will be far more time intensive.

Modifications will also need to be made to the portal to ensure that the bandwith (rate of data transfer) is increased to allow larger documents to be uploaded to the portal as attachments, which is a current problem with the portal.

The software is already outdated. It is not intuitive and does not allow for errors to be corrected. It is also inflexible and does not allow for claims to be transferred to other solicitors.

Before the changes can be launched, sufficient time must be allowed for the process changes to be:

1. Incorporated into the software
2. Tested

3. Application to application providers write their software changes

This is probably achievable for RTA extension.

Better data capture would also be necessary so that a clearer picture is obtained around why cases drop out and what happens after they exit, We should also be collecting data on the level of settlement to ensure that damages are not being driven down.

Governance and ownership

The portal is currently funded by the insurers and managed on a daily basis by MIB Management Services (MMS). This is clearly a conflicted role as project management should be independent and not run by insurers.

Portal Co owns the intellectual property rights to the system, but CRIF, the IT company responsible for the IT development, owns the actual IT programme.

3. What, if any, modification would need to be made to the pre-action protocol and the electronic portal to deal with employers' and public liability claims.

- ***a. Are there types of EL and PL claims where liability is more readily admitted?***
- ***b. If so:***
  - ***i. Are the legal costs of such claims relatively similar to each other and to those for RTA claims?***
  - ***ii. What level of damages do such claims tend to be for?***
- ***c. Would any time limits need to be altered for EL and PL claims-if so, which and why?***
- ***d. Is the current RTA protocol for obtaining medical report appropriate for EL and PL claims? What proportion of RTA, EL and PL claims need more than two medical reports?***
- ***e. What interim payment arrangements would be appropriate for EL and PL claims?***
- ***f. Is it possible to include short tail disease cases in extension?***

We have said above, but it bears repeating, that before protocols can be written and portals built, the foundations for such a process must be put in place. These include:

a. compulsory insurance;
b. an insurance database like askMID;
c. a direct right of action against the insurer.

A process for employers' liability (EL) and public liability (PL) cannot work without them.

Given the timetable stipulated by the Government, delivering these foundations is unachievable. Lessons must be learnt from the RTA claims process. We understand anecdotal evidence suggests that in some firms and insurance companies that pre-medical offer make up to 25 per cent of offers in the portal. This practice removes the checks and balances from the process, and should not be encouraged further by setting the fee too low. Settling cases in such away will result in compensation not being properly assessed. The current system does not include counsel and we don't know what effect the implementation of the LASPO Act will have on behaviour in the portal.

There have also been benefits. The life of cases has been cut, delivering compensation more quickly to injured people and the amount of work involved in pursuing a claim was reduced as were the costs involved. There has been a reduction in disputed cases and fewer cases proceed to quantum hearings. There is also greater co-operation between the parties.

Employers' liability accident cases

With employers' liability accident (ELA) cases there is a different relationship between the employer and employee. The longer a claimant is not allowed to investigate a claim, the more prejudiced his position may become and the more difficult it may be for him to prove his claim to the court. The claimant's recollection and those of any witnesses to the incident will be forgotten over time and evidence may be lost.

This evidence must be recorded, not only to ensure that the precise mechanics of the accident can be described, but also to protect evidence because employers could put pressure on witnesses and repair defective equipment before evidence has been gathered. This procedural step must be written into the protocol to ensure that in cases where liability is denied and then falls out of the protocol, the claimant solicitors have gathered the evidence, including witness evidence and site inspections required to prove the claim. After a denial of liability a witness may be more reluctant to assist often because of reluctance to criticise an employer when the employment relationship could be affected.

In most ELA cases the defendant also has, or should have, knowledge of the accident before notice of the claim is received. We understand that Government is proposing 30/45 days in the protocols it has requested be drafted. If the insurer does not respond in that time limit and the cases exits into the personal injury protocol that allows a defendant over 5 months to investigate the claim. This is wholly unacceptable. Any delay increases the risk of evidence being lost. Plus we know from current insurer practices that insurers allow cases to exit to buy them extra time. The objectives of the claims process was to deliver quicker compensation at

reduced cost forcing a culture of change from ‘delay and routinely defend’ to analyse quickly, admit and, where appropriate, settle.

Pre-action protocol

The protocol for employers’ liability accident cases can largely mirror what we have said will be required for stage two for more complex RTA cases. There will of course be administrative changes required to remove references to road traffic accidents and vehicle damage.

Claims involving multiple defendants are currently excluded from the RTA claims process cases following MoJ guidance[27]. The same must apply to ELA cases.

Defining employers’ liability accident

The protocol will need to provide a definition for accidents at work. The current civil procedure rules provide a possible definition for an accident at work as being where “the dispute is between an employee and his employer arising from a bodily injury sustained by the employee in the course of his employment”[28].

Communication between the parties

Communication between the parties is through the electronic portal[29]. The portal and the protocol combined, deliver strict time limits and efficiencies beneficial to both parties. The defendant is defined in the RTA protocol as the “insurer of the person who is subject to the claimant”[30] and the entire process is based on knowing who the insurer is and dealing with the insurer as the defendant. The protocol stipulates that the CNF will be sent directly to the defendant’s insurer[31].

Claim notification form

The CNF form will need to be amended to remove references to RTA, vehicle damages etc. It would be helpful for the form to only bring up the sections relating to the type of accident, e.g the sections relating to vehicle damage, repairs, reporting to the police, MIB etc, when RTA has been ticked but not when ELA is being recorded. The accident details section will also require amendment to include the employee.

If liability is denied, the defendants must disclose, as they are required to do now, documents they have in their possession which are material to the issue in the case and assist with resolving the dispute and narrowing the issues. Changes will be needed to allow for these documents to be attached to the response pack.

[27] Frequently Asked Questions Low Value Personal Injury Claims in Road Traffic Accidents 11 March 2010 page 3
[28] CPR 45.20
[29] Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents paragraph 5.1
[30] Paragraph 1.1(3)
[31] Paragraph 6.1

Contributory negligence

If a case involves contributory negligence[32] it will need to drop out of the protocol. Law Reform (Contributory Negligence) Act 1945 allows the court to apportion liability for damages between the claimant and the defendant where the claimant's negligence has materially added to the loss or damage sustained. Section 1 provides:

> "(1) Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage..."

The reference in s1(1) to the claimant's share in the "responsibility for the damage" requires a court to consider what contribution the claimant made to their loss or damage and the degree of blameworthiness.

Where there are arguments over contributory negligence in RTA cases, these drop out of the protocol. The only exception to this in RTA cases is where the claimant has failed to wear a seatbelt. This is because there is established case law[33] which overtakes statute and prescribes how and when the percentage contribution for the claimant's failure to wear a seatbelt should be applied. There is no equivalent in EL and PL cases.

Medical evidence

The range of injuries will be wider ranging than with RTA cases. There must be no restriction on the type of expert that can be instructed. Equally if the claimant has suffered multiple injuries that require reports from experts in different disciplines, medical reports should be obtained simultaneously to avoid delay.

In cases resulting in more serious injury, medical notes including x-ray films and MRI scans will be required as a matter of routine.

In addition the changes for higher value RTAs will equally apply here for all ELA cases.

Interim payments

The current rules on interim payments prevent claimants being able to request a payment without first having a medical report that recommends a further medical assessment[34]. In ELA claims the claimant will often be suffering ongoing loss of

[32] Paragraph 6.15
[33] Froom v Butcher [1976] 1 QB 286
[34] Ibid Paragraph 7.7

earnings claims, paying for treatment or medication. In these cases an interim payment over and above those allowed under the current RTA protocol may be required and be able to be proved before the medical evidence is available.

Special damages

The changes for higher value RTA cases will apply equally here for all ELA cases.

Advice from counsel

We have said above that the rules need changing to allow for quantum advice from counsel in RTA cases. When the rules are being considered for EL cases the same provision for advice from counsel must be included.

Portal

The current software provider, CRIF, have already said that they would have to build a second portal for EL and PL claims. Whilst there is sense in sticking with the current system with regard to extension of the RTA portal, there should be an open tendering process for a new portal provider for EL and PL. Advantages include compliance with the procurement rules, obtaining the best price for the work, more modern and intuitive software, independence, better data and collection, competition and contingency if one portal fails. The current portal has substantial limitations and we would urge the Government to carry out a proper procurement process to find a better long term solution.

Employers' liability disease cases

Disease cases are not straightforward in instances where exposure has happened over a long period of time as there can often be issues tracing insurers. These cases can also routinely raise complexities around exposure, causation, apportionment and loss of earnings.

Tracing an employer

In addition to our general concerns raised above, which relate to all employers' liability insurance cases, there are additional problems in cases where the exposure happened a long time ago and the employer itself may no longer be trading.

Exposure

Whilst there is a definition of what a disease claim is in civil procedure rules[35], it does not differentiate between diseases where the exposure has taken place over a long

[35] CPR 45.23 states "The dispute is between an employee (or, if the employee is deceased, the employee's estate or dependents) and his employer (or person alleged to be liable for the employer's alleged breach of statutory or common-law duties of care); and the dispute relates to a disease with

period of time with multiple single exposures causing harm over that period, or diseases where there is a single, damaging exposure which could have occurred during the current period of employment or, as in mesothelioma cases, a long time ago.

To expand a little on this, the nature of some diseases, such as asthma, means that the length of time between exposure and onset of symptoms is short. Therefore, any claim being made is likely to be made against the claimant's current or most recent employer. The nature of other diseases, including asbestos-related diseases, noise induced hearing loss and vibration related injuries, is that there can be a delay of many years (up to 40 plus years in asbestos cases) between the relevant exposure and the onset of symptoms caused by that exposure. It is most typical in those categories of cases for the claim to be made against one or more previous employers from some years ago. If the claim is against multiple defendants, it should be excluded from the process as is now the case with the RTA cases[36].

Causation

In disease cases even where a defendant or insurer admits a breach of duty, it is commonplace for causation to be disputed. For instance, in an asthma case, an employer or his insurer may admit that they have wrongly exposed an employee to potentially harmful dust or fumes. They may dispute whether that dust or those fumes had any effect on the claimant and dispute whether the asthma is occupational or simply constitutional. Similar arguments can be raised in every disease case. Under the RTA protocol, causation arguments lead to cases exiting the process.

Apportionment

Further, because of the nature of disease cases and the exposure alleged by claimants, it is commonplace for claims to be made against a number of employers. In addition to arguments as to whether each or any employer was in breach of its duty to the claimant and whether the exposure in question caused any harm to the claimant, some diseases such as noise induced hearing loss are dose related, e.g the greater the exposure, the more severe the injury. Where this is the case and liability is established against one or more defendants, the damages are apportioned in accordance with the exposure they are responsible for. These cases should be out of the process.

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which the employee is diagnosed that is alleged to have been contracted as a consequence of the employer's alleged breach of statutory duty or common-law duties of care in the course of the employee's employment"

[36] Frequently Asked Questions Low Value Personal Injury Claims in Road Traffic Accidents 11 March 2010 page 3

Special damages

In some disease cases, like dermatitis or asthma, the individual can make a reasonable recovery from the initial symptoms, but can no longer work in the environment in which exposure occurred. For example, a nurse suffering from dermatitis may make a reasonable recovery from her symptoms, but will be restricted in her return to nursing because of the disease. There will need to be an expert report to address the restrictions on her employment, as there could be loss of earning issues including a *Smith v Manchester* award for handicap on the labour market.

It seems to us that a streamlined process for disease cases, will only work where breach of duty, causation and apportionment are not an issue. Our members' experience however, is that this happens in a very small number of cases. Insurers always seek to preserve their position on causation and apportionment because the medical evidence could support that.

Public liability cases

It is not clear what is meant by public liability. There is no legal definition of public liability the Government has never provided one and these types of case can be wide ranging.

We believe that there is a clear distinction between public liability cases and claims that arise as a result of a road traffic accident or accident at work. We draw this distinction because in RTA and EL cases, defendants either know or should know about the accident prior to the claim being made. This is frequently not the case in public liability cases. Public liability defendants may only become aware of a potential claim through the notification form being submitted. As with ELA cases there is an evidential difficultly if the defendant is allowed substantially more than the 15 days stipulated under the RTA protocol to investigate liability and if the claimant is not allowed to preserve the evidence in his case immediately. We know from our members that in around 80-90 per cent of PL claims, liability is denied. The claimant must not be reliant upon the defendant preserving and producing documents to prove the claimant's claim. We know currently that defendants fail to record the exact location of a defect or the date of repair. Failing to preserve this evidence will prejudice the claimant's case.

Pre action protocol

The same administrative changes would need to be made for PL cases as noted for ELA. The procedural requirements relating to expert evidence, interim payments, special damages and advice from counsel noted in question two for higher value RTA cases would also apply here too.

Defining public liability accidents

The protocol will need to provide a definition for public liability. There is currently no such definition and these types of case can be wide ranging. Not only do they include slips and trips, but also child abuse cases, accidents in schools and failed beauty treatments to name a few.

Tracing an insurer

The entire streamlined process is based on knowing who the insurer is and dealing with the insurer as the defendant. It is also based on communicating through an electronic portal[37]. The protocol stipulates that the CNF will be sent directly to the defendant's insurer[38]. Public liability insurance is not compulsory so there may not be an insurer to pursue directly. Identifying both the defendant and the insurer in a public liability case will be more complex. For example, even slipping or tripping cases are not always straightforward. A defect in a pavement or road could be the fault of the utility company or a private land owner, or the highway authority. Equally not all defendants will be insured. Many local authorities self-insure, therefore the CNF cannot then be sent directly to the insurer.

The Government timetable for this work is unachievable and if these issues are not resolved we question the sense in pursuing this work further.

Contributory negligence

Contributory negligence is often a significant issue in PL cases. If a case involves contributory negligence[39] it will need to drop out of the protocol, for the same reasons given above in relation to ELA cases.

Additional work

In addition to the changes noted above, the protocol will also need to be amended as noted above regarding interim payments, special damages, advice from counsel, and medical evidence. The changes we have noted for the CNF and stage three will also be relevant here.

Portal

See our response to employers' liability accident cases above.

User pays

The RTA portal is currently paid for by insurers who pay a levy to the MIB for every claim submitted through the portal. The numbers of RTA claims are greater than PL. We therefore have to question, firstly who will put in the money to cover the set-up

[37] Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents paragraph 5.1
[38] Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents Paragraph 6.1
[39] Paragraph 6.15

cost for developing this portal and secondly if that problem is overcome, what the cost per claim will be if user pays is implemented because the number of PL cases being pursued is so much lower than RTA.

4. The reasons why, since the commencement of the RTA protocol, claims have exited the scheme and any ways this might be addressed?

a. *Where do claims currently fall out of the RTA Protocol and what are the primary reasons for this at each point?*

From the data supplied by MIB Management Services (MMS)[40] we know that of the approximately 1.4 million CNFs which have entered the portal so far, 48 per cent of them have exited without resolution. Of those which left the process, 26 per cent (or 354,015) exited at the end of stage one due to insurers failing to respond on liability within the 15 working days.

At stage two the majority of cases leave the process because insurers fail to respond to the settlement pack within 15 days. Of the 49,219 cases which leave at stage two, this equates to 69 per cent.

Anecdotal evidence from one of our members confirmed that some insurers complying with the protocol have exit rates in the region of only nine per cent of the cases they deal with. Whereas other insurers who routinely ignore the rules and exit rates are in the region of 94 per cent of cases they deal with. The effect of insurers routinely flouting the rules is that, the protocol is compulsory for claimants but not defendants. Data from our members suggests that the reasons for RTA cases leaving the portal are in the main due to liability not being admitted and insurers failing to respond on liability within the timeframe stipulated. There could be a number of reasons for this including a cash flow benefit of not paying stage one costs in these cases that exit and getting an extra three months to investigate.

5. The type of employer' and public liability claims that lend themselves to a standardised and streamlined process.

See our detailed response to question 2.

[40] Portal Management information from April's Portal Co Board meeting.

Appendices

Appendix1- complexities research

Appendix 2- Savings to the insurance industry in legal costs alone due to efficiencies in the RTA portal.

Appendix 3- Savings to the insurance industry with the removal of the 12.5% success fee in the RTA PI claims portal.

Appendix 1- APIL RTA Portal Survey - Results

Please note: All figures exclude cases which were issued and where there was a complete denial of liability by defendants.
All figures are (*n*= 32) unless otherwise stated:

Average Total damages award= £15,187.13
Average Base costs= £5,018.91
Average no. of fee earning hours= 28:55hrs
Level of primary fee earner= Band A (37.5%)
= Band B (12.5%)
= Band C (37.5%)
= Band D (12.5%)

Costs figures with success fees (*n* = 27)
Average Total damages award= £15,438.44
Average Base costs=£5,146.11
Average Success= £689.11
Average no. of fee earning hours= 30:16hrs

Size of firm (*n* = 31) = <10 Partners (71%)
= 10-19 partners (13%)
= 20-29 partners (16%)
No. of PI partners = 1 to 5 (87.5%)
=0 6 to 10 (12.5%)
Managing partner / PI head = 53%
Average no. of RTA cases a year =433

Areas of complexity (top three in **bold**)
Contributory negligence alleged= 22%
Liability admitted after the protocol period= 31%
Claimant under a disability (a minor or patient claim)= 9%
Refusal to negotiate=16%
Facts in dispute= 6%
Pre-existing condition= 28%
Ongoing medical condition as a result of this accident= 50%
Fatal settlement= 0%
Accident abroad= 0%
Complex injury= 34%
More than one medical report needed= 59%
Forensic accountant report needed= 3%
Complicated special damages (disputed special damages claims)= 25%
Rehabilitation= 44%

English not the claimant's first language= 3%
More than one accident= 9%
Questions to the medical experts= 25%
Defendant's own medical expert evidence= 0%
Multiple medical expert disciplines instructed at outset= 16%
CPR Part 18 requests= 0%
Other=16%

- Within a year of limitation
- Hernia issue and heart investigations
- 5 medical reports/complicated future loss
- TPI agreed to deal on WOP basis 2 years post-protocol period
- Client lives in a different country

Type of injury (top there in **bold**)
Fracture= 56%
Head Injury= 9%
Psychological= 47%
Soft tissue= 78%
Scarring=28%
Other=41%

- crush injury lower leg
- Damage to breast implant requiring surgical intervention
- Damaged teeth
- Deformity to knee
- Dental damage
- Hernia
- Internal abdominal
- Lacerated Liver and Spleen
- Lacerations to ankles
- Muscle loss, punctured lung, internal bleeding
- Ongoing migraines
- Operation required
- Scarring

Personal PI caseload
Average no. of PI cases (n=25)= 126
Average % consisting of RTA cases (n=28)= 41%
Average % of RTA cases which are between £10k & £25k (n=28)= 27%

Appendix 2- Savings to the insurance industry in legal costs alone due to efficiencies in the RTA portal

If we assume that the original estimate of *"almost 80% of all motor personal injury claims"*[41] will be covered by the portal, and that in 2011/12 there was 828,489 motor claims[42], this means that 662,791 claims should be captured by the RTA portal. However, according to the Portal Co. management information statistics for April 2012, 48% of claims entering the portal leave without resolution. This should leave about 344,651 claims still in the portal.

Now if each claim is saving the insurance industry £800, based on Rob Cummings comments in David Ward's report *'It can't go like this!'*[43], then over a year – based on the 2011/12 claims figures – the insurance industry will directly save approximately £275 million in legal costs alone.

Calculation:
"[B]*ringing down the average legal cost from around £2,000 to around £1,200"* =£800 saving
Motor insurance claims, compared to all personal injury claims = 80%
No. of motor claims in 2010/11 (as reported to the CRU) = 828,489
80% of 828,489 = 662,791
No. of Portal Claims which leave the portal without resolution = 48%
52% remain in the portal
6*62,791 x 52% = 344,651*
344,651 x £800 = £275,720,800

Please note: It should also be remembered that this savings does not include efficiency savings within the insurance industry due to the automated claims process; therefore the actual savings are going to be even higher.

[41] http://www.rtapiclaimsprocess.org.uk/DOCs/MOJ%20reforms%20-%20implementation%20ABI%20FINAL%20release.doc
[42] http://www.dwp.gov.uk/other-specialists/compensation-recovery-unit/performance-and-statistics/performance-statistics/
[43] Q:\Westminster\Insurance industry\David Ward MP\car-insurance-interim-report.doc

Appendix 3- Savings to the insurance industry with the removal of the 12.5% success fee in the RTA PI claims portal

If we assume that the original estimate of *"almost 80% of all motor personal injury claims"*[44] will be covered by the portal, and that in 2011/12 there was 828,489 motor claims[45], this means that 662,791 claims should be captured by the RTA portal. However, according to the Portal Co. management information statistics for April 2012, 48% of claims entering the portal leave without resolution. This should leave about 344,651 claims still in the portal. Now if each claim forgoes its 12.5% success fee, there is a saving of £150 per claim. The insurance industry will directly save approximately £52 million a year. In addition, if less claims exited the portal, this figure could climb as high as nearly £100 million annually.

Calculation:
Motor insurance claims, compared to all personal injury claims = 80%
No. of motor claims in 2011/12 (as reported to the CRU) = 828,489
80% of 828,489 = 662,791
No. of Portal Claims which leave the portal without resolution = 48%
52% remain in the portal
662,791 x 52% = 344,651
Removal of 12.5% success fee = £150 saving per case
344,651 x £150 = £51,697,650

Please note: It should also be remembered that this savings does not include efficiency savings within the insurance industry due to the automated claims process; therefore the actual savings are going to be even higher.

[44] http://www.rtapiclaimsprocess.org.uk/DOCs/MOJ%20reforms%20-%20implementation%20ABI%20FINAL%20release.doc
[45] http://www.dwp.gov.uk/other-specialists/compensation-recovery-unit/performance-and-statistics/performance-statistics/