

**Ministry of Justice**  
**Transforming our justice system:**  
**summary of reforms and consultation**

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**A response by the Association of Personal Injury Lawyers**  
**20 October 2016**

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation with a 25-year history of working to help injured people gain access to justice they need and deserve. We have around 3,700 members, committed to supporting the association's aims and 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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## Assisted digital: civil claims

**Question 1: Do you agree that the channels outlined (telephone, webchat, face-to-face and paper) are the right ones to enable people to interact with HMCTS in a meaningful and effective manner? Please state your reasons.**

Some of the most vulnerable members of society will find it the most difficult to interact with an online HMCTS and steps must be taken to ensure that they are assisted and a paper alternative should always be available.<sup>i</sup> Vulnerable users may be deaf or hard of hearing and will benefit from using a service called ‘text relay’: they may be blind or partially sighted. Any electronic means of communication deployed must be capable of being ‘disability friendly’.<sup>ii</sup> Any timetables imposed would also need to reflect the speed of interaction: paper will be much slower, for example.

Any set of communication channels will require an on-going commitment to funding and support beyond the initial setup period, with a system of regular reviews.

More generally, there must be a commitment to safeguard personal data and general on-line security. HMCTS must provide a service which is capable of multiple types of data entry (phone, online, paper) in a way that is safe and secure. At present law firms take responsibility for their clients’ data security.

HMCTS needs to be alert to the need to adapt to the clients’ needs. We recently surveyed our members for their views on a digital court service and asked them how their clients initially contact them, and then continue to interact with them during the life of the claim.

Telephone and email are used in a considerable number of cases, but personal interaction remains key and ‘paper channels’ still play a big part, particularly where the client has assisted digital requirements or is a first time/irregular user of HMCTS services which is a particular feature of personal injury claimants<sup>iii</sup>: dealing with the court is a ‘distressed purchase’ in terms of the claimant’s cost, time and effort.

In fact, we know that our members’ clients’ initial concerns are:

- What are the processes involved? How long will it take to resolve the claim? Will they have to appear in court? What is expected of them?;
- Questions about the validity/viability of their claim: do they have a case worth pursuing? If they have been fobbed off by the hospital – is their claim justifiable? What are the prospects of success?;
- How can the claim be funded? How much it will cost?;
- What is the likely value of the claim? Is there any rehabilitation available for their injuries?;
- Is there a possibility of obtaining an apology from the person who caused their injuries?;

- What will be the effect of the claim on their employer/their employment status/effect on their earning capacity?;
- Concerns about the power of their opponent: will they lose their job if they make a claim? Will the doctors all group together against the claimant?

None of these issues can be resolved, in our view, by simply interacting with the court service: all of these issues, in our view, require advice from a legal professional. So, while interaction with HMCTS can be done by the various means identified, it should not exclude the ability of either party to seek, and recover, the costs of obtaining legal advice and assistance.

**Question 2: Do you believe that any channels are particularly well suited to certain types of HMCTS service? Please state your reasons.**

Debt recovery cases lend themselves to a digital/online service. Both parties know how much is being claimed and so it is a case of the payment schedule having to be agreed.

We do not think that further digitalisation (beyond the existing online portals for road traffic accident, employers' liability and public liability claims valued at up to £25,000) is suitable for personal injury (PI) claims worth more than the current small claims limit: there is the constant risk of under compensation - clients would be led by insurance companies (the other party) who would be looking to minimise damages paid. The lack of representation which comes with over-digitalisation is our concern. See our comments below on the effect of this, combined with fixed fees.

Digitalisation of other aspects which interact with such claims, such as medical records and communication with the court service is, in our view, appropriate.

**Comment on civil fixed costs, referred to in the consultation, upon which questions are not asked:**

**Extending the fixed recoverable costs regime: "We are keen to extend the fixed recoverable costs regime to as many civil cases as possible. The senior judiciary will be developing proposals on which we will then consult."**

A fixed fee scheme already exists in most areas of personal injury claims: road traffic claims, employers' liability (EL) and public liability (PL) claims are subject to pre-action protocols which fix both procedures and costs for claims valued at up to £25,000 where liability has been admitted.

The average value of claims within the fixed fee scheme is £2,678 (RTA), £4,324 (EL accidents), £3,897 (EL disease) and £4,050 (PL claims).

Data from the Portal<sup>iv</sup> indicates that 95% of all RTA claims which enter are worth £5,000 or less – usefully the data indicates that the number of claims tails off far below the £25,000

value limit – suggesting that fixed costs already apply to the vast majority of all RTA personal injury claims.

Similarly, 83.5 per cent of EL claims are worth £5,000 or less. There is a shallower fall-off of claims towards the £25,000 limit, but the data still suggests that a large percentage of EL claims are currently within the EL fixed costs scheme.

We contend that those which remain outside that scheme are those which have added complexity: more than one defendant, complex evidential or liability issues, which are not suitable for a fixed costs regime: the permutations of variables would make it difficult to fix the claims process and thereafter the costs.

## **Tribunals**

### **General comments about the scope of our response**

APIL members tend to deal with only those First-Tribunals which deal with Criminal Injuries Compensation appeals and War Pensions and Armed Forces Compensation. Our responses to the questions below are informed by and relate to those two areas of First-Tier Tribunal work in particular.

We have some qualms about video hearings: sometimes the totality of the claimant/applicant's injury is difficult to convey solely in writing or on screen – in those circumstances the tribunal can benefit from the claimant/applicant's demeanour when assessing the appeal.

Note also that in both the Criminal Injuries and the War Pensions and Armed Forces First-Tier Tribunals, there is no scope for finding funding assistance for the claim: the applicant has to pay for his or her representation.

### **Question 7: Do you agree that the SPT should be able to determine panel composition based on the changing needs of people using the tribunal system? Please state your reasons.**

Currently, the First Tier Tribunal (Criminal Injuries) panel is composed of a judge, medically qualified practitioner and a lay person. In the War Pensions and Armed Forces Compensation Tribunal, the composition is similar, with a solicitor, a medical lay member and another lay member who will have experience in the Armed Forces.

When the criminal injuries tribunal is considering eligibility, there *may* be no need for a medical lay member, because the issues under discussion will usually be legal in nature. In such circumstances it may well be sensible to empower the SPT to determine the panel composition to reflect that. Conversely, when considering the amount of the award, it may be helpful to ensure that the non-medical lay panel-member is a 'disability qualified' individual who is more likely to have an insight into what is involved in the applicant/appellant's claim.

In connection with the War Pensions and Armed Forces Compensation Tribunal, it is essential to continue to include a serving or former regular commissioned or senior non-commissioned officer: the military aspect cannot be dealt with by a civilian lay panel member, in our view. In connection with medically qualified practitioner, it is still preferable to appoint someone who has experience of treating servicemen and women, due to the particular aspects of injury within the armed forces.

**Question 8: In order to assist the SPT to make sure that appropriate expertise is provided following the proposed reform, which factors do you think should be considered to determine whether multiple specialists are needed to hear individual cases? Please state your reasons and specify the jurisdictions and/or types of case to which these factors refer.**

Following on from our response to question 7 above, we can envisage that in such scenarios where only one aspect of the application is under consideration, that there is scope for the lay persons to be differently composed from the usual default panel.

As it is likely that the panel will be aware in advance of what is being considered and are unable to go beyond that (see for example *R(SB) v FTT* [2014] UKUT 0497 which says that a Tribunal in a Criminal Injuries Compensation case can only deal with the issues which have been raised with the CICA at review stage), the panel should be able to avoid, as a result its composition, being unable to deal with other issues (ie – moving on from eligibility to valuation of award) if that is beyond its original remit. Therefore, if the CICA refuses an application on eligibility grounds and that decision is the subject of the appeal, then that is the only issue which can be decided by the Tribunal: other aspects will have to be remitted back to the CICA.

A ‘pool’ of experts to call upon to make up the panel is an interesting idea. Currently on Criminal Injuries panels, the medically qualified panel member may have a qualification which does not relate to the injuries under consideration. For example, a psychiatrist may sit on a panel which is considering an orthopaedic injury: while there is no question that their expertise is valuable, if a particular type of injury was being considered and a medically qualified panel member with a more relevant specialism was available, that could be beneficial to all concerned in the particular tribunal. We accept, however, that this would create more administrative requirements, and may not be an ideal solution.

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<sup>i</sup> **Background statistics:**<sup>a</sup>

- In 2016, 11% of households in Great Britain have no internet access: 21% report that this was due to a lack of skills, while 59% of households without internet access report that this is because they don't need it.
- 82% of adults (41.8 million) in Great Britain access the internet on a daily basis.
- 89% of households in Great Britain (23.7 million) have internet access.
- In 2016, 77% of adults bought goods or services online in the last 12 months, up from 53% in 2008. “Clothes or sports goods” were purchased by 54% of adults, making them the most popular online purchase. Household goods were the second most purchased items online by 48% of adults.
- Computer use by age: nearly all households with children have an internet connection (99%). In households with one adult aged 65 or over, only 53% had internet access. In contrast 87% of households with only one adult aged 16 to 64 years, had internet access.

Note that the majority of online activity is sending/receiving emails, reading news and purchasing goods.

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When it comes to interacting with the state, there are no 2016 statistics yet, but 2015 statistics are available: the numbers using the internet to interact with public authorities/services were low.<sup>b</sup>

Public authorities and services:

- In 2015, the most common reason for using the internet to interact with public authorities or services was to obtain information from websites, (33% of adults), followed by submitting completed forms (30%) and downloading official forms (24%).
- But note that 44% did none of these things online with public authorities.

This would suggest that conducting a civil claim online could initially attract similar low participation rates.

In December 2014 OFCOM reported three per cent of premises in the UK still receive internet speeds of less than 2Mbps, while 15 per cent have speeds no higher than 10Mbps. Slower speeds can confer disadvantages on businesses and individuals, adversely affecting use of on-line services and provision of wi-fi services. Note though that mobile or smartphones are now used to access the internet by 71% of adults in Great Britain.

<sup>a</sup> <http://www.ons.gov.uk/peoplepopulationandcommunity/householdcharacteristics/homeinternetandsocialmediausage/bulletins/internetaccesshouseholdsandindividuals/2016>

<sup>b</sup> <http://www.ons.gov.uk/ons/rel/rdit2/internet-access---households-and-individuals/2015/stb-ia-2015.html>

## ii Vulnerable groups and online access

“While we have seen a notable increase in internet usage across all groups in recent years, many older and disabled people are still not online, with two-thirds of women over 75 having never used the internet.” Writes Pete Lee, Surveys and Economic Indicators Division, Office for National Statistics.

25% of disabled adults have never used the internet: There were 0.5 million disabled adults who had last used the internet over three months ago, making up 50.0% of 0.9 million lapsed internet users. In 2016, 97.3% of disabled adults aged 16 to 24 years were recent internet users, compared with 99.4% who were not disabled. Of disabled adults aged 75 years and over, 30.8% were recent internet users, compared with 48.1% who were not disabled. Across all age groups, the proportion of adults who were recent internet users was lower for those that were disabled, compared with those that were not.

(<https://www.ons.gov.uk/businessindustryandtrade/itandinternetindustry/bulletins/internetusers/2016>)

## iii APIL surveyed its members who said that their clients first make contact by:

telephone (85.21%); website enquiry form (45.77%); referral (union/victims' group) (25.35%); email (17.61%); in person (11.97%).

APIL members then typically continue to communicate with their clients by: email (54.93%); letter (29.58%); telephone (11.97%); in person (3.52%).

We know that meeting in person with a carer/translator is a favoured approach where the client has disabilities or communication difficulties. 36.72% of our respondents said they tailor their approach according to the client's needs and 35.94% said that they offer a home visit or a meeting in person with a third party carer/translator as appropriate with such clients.

iv **Claims Portal Executive Dashboard:** <http://www.claimsportal.org.uk/en/about/executive-dashboard/>

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