

Solicitors Regulation Authority

Looking to the future: better information, more choice



**A response by the Association of Personal Injury Lawyers
December 2017**

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 over 3,000 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:

Alice Taylor, Legal Policy Officer

APIL

3 Alder Court, Rennie Hogg Road, Nottingham, NG2 1RX

Tel: 0115 943 5400

alice.taylor@apil.org.uk

Introduction

We welcome the opportunity to respond to the SRA's consultation on improving information for consumers of legal services. We appreciate that the public is very sensitive to cost, and accept that more can be done by solicitors' firms to be transparent with information that will help consumers to choose the right firm for them. Pricing in personal injury claims is far from a "one-size-fits-all" exercise, however, and firms would find it very difficult to provide the level of detail proposed in the SRA's consultation from the outset, without knowing the circumstances of the case in question.

In addition to indications of the price of legal services, it is key that consumers receive as much information as possible to help them ascertain the quality of the service offered. Details of the level of relevant accreditations that the firm or individual solicitor holds should be made clear on the firm's website, along with details of what this means for the consumer.

Pricing

While we agree that it is important that some pricing information is made available to potential clients, the nature of personal injury law makes it extremely difficult to comply with the principles set out at paragraph 45 of the SRA's consultation and in the SRA's guidance on page 9 of Annex Two. Costs depend heavily on the circumstances surrounding the individual case. If solicitors were required to provide an estimate without knowing any of the details of the case, this would likely change as the case progressed, leading to the claimant feeling misled.

Information on funding arrangements and likely cost tailored to the individual claim is usually provided to the client in detail in the Retainer Letter of Professional Appointment (Client Care letter), and this is a far more suitable stage to provide accurate pricing information.

Details of any success fee or percentage that may be payable from damages

The costs payable by the client will be dependent on a number of factors in each case and it will be extremely difficult to provide accurate information on this at the outset, without knowing anything about the individual's claim.

The following factors play a part in the calculation of how much clients ultimately have to pay in personal injury claims:

- The type of case
- Whether the claimant is a protected party
- Whether the case will fall within a fixed costs regime
- What sort of funding arrangement or third party cover for legal costs is in place
- Whether liability is in dispute
- The success fee, which is calculated based on the risk presented in each case
- The behaviour of the parties, and whether there are likely to be any adverse costs orders
- Whether Part 36 offers will be made, by whom and whether they might be accepted late
- Whether the claimant succeeds on the whole or part of the claim

- In cases that require a budget, there will be uncertainty as to what the court may allow. Whether the hourly rate will be recoverable will depend on whether the court determines that it is reasonable, necessary and proportionate on assessment.

Details of any disbursements that the client may be liable for (such as ATE insurance, counsel's fees or obtaining a medical report) and the circumstances in which liability will arise

Disbursements are not the same fixed amount in each case. The amount of disbursements will depend on, for example, the number of and type of expert reports required, which will depend on the type of injury, degree or otherwise of recovery and circumstances of the claim. The most that could be provided by firms is a generic list of the most common disbursements that are likely to be paid, but no two cases are the same. Additionally, it is for the court to determine whether or not disbursements are to be paid by the losing party.

An explanation of any other circumstances when the client may be liable to contribute towards their own solicitor costs and an explanation of any potential liability for the other side's costs

It will be difficult to establish without knowing the details of a particular case whether a client will be liable to contribute to their solicitors' or the other side's costs.

APIL recommendation

In place of the SRA's proposals, there should instead be standard wording which personal injury solicitors are required to put on their websites which provides basic information on how fees in personal injury cases are calculated. We are concerned that a requirement to provide any more detail than this will open up the risk of clients being dissatisfied when they realise that their bill is going to be more than a generic figure posted on the firm's website.

The wording should be developed by the SRA and would provide very generic information about the types of funding available for personal injury cases, such as conditional fee agreements, damages based agreements, trade union funding, and what each of these entail. It should also explain prominently that the client may be charged a success fee, and this should include information about the maximum percentage that the law permits the success fee to be and how it is calculated. Firms should also be obligated to set out their policy on obtaining ATE insurance, and the range of premium prices for the products that they offer, with an explanation of when and under what circumstances the ATE premium will be payable by the client. There should continue to be a requirement, as currently set out in the SRA Handbook, that firms provide updates to clients at certain stages of the case on what the costs are likely to be. Firms could also provide details of their hourly rates.

It may also be useful for firm websites to provide information on the circumstances under which a client will have to pay their solicitor's costs if they lose the case. We suggest that in order for the claimant to be more fully informed, examples of the sorts of circumstances that a client would be charged a fee by the solicitor if they lose their case should be set out on the firm's website. These could include for example, where the claimant has been fundamentally dishonest (with an explanation of what this means), where there has been a breach of the CFA, or where the client has misled the medical expert. Displaying this

information may help to discourage those who may think of making an exaggerated or fraudulent claim.

Description of services

We agree that a description of services should be provided on the websites of claimant personal injury firms. Firms should provide generic information about the types of work and the level of staff completing that work, so that potential clients are fully informed when choosing the right firm for them. Many firms with websites already provide the majority of this information already.

It would be useful if there was also a requirement that the firm sets out the level of relevant specialist accreditation, if any, that each solicitor has obtained. Firms should specify which sorts of cases will be dealt with by, or carried out under the supervision of, an accredited lawyer. Equally, if individuals do not hold accreditations, this should be made clear.

It is important that people know whether the firm they are considering has specialism in the area that they would like advice on, and displaying individual accreditations is the best way to demonstrate this. APIL offers accreditation in a variety of specialisms, including portal claims, brain injury, spinal injury, and clinical negligence. Holders of these accreditations must have met rigorous criteria demonstrating that they are competent in that area of law.

Regulated by the SRA logo and digital badge

We agree with the proposal to introduce an SRA logo for promotional and printed materials and window displays to confirm that the SRA regulates the firm. Alongside this, however, is a need for the SRA to raise awareness of their role as a regulator amongst the general public. On its own, to most lay members of the public, the fact that a firm is regulated by the SRA will hold little meaning. The SRA should raise public awareness of its role in ensuring that solicitors abide by the rules of their profession, and that the SRA regulation will offer certain protections to consumers. When people are choosing a legal services provider, the SRA should aim for it to be the norm for consumers to look for the SRA regulation logo when they are searching for a legal service provider, just as they would look for ATOL protection when booking a holiday.

It is important that the SRA ensures that customers know the difference between choosing an SRA regulated firm and an un-regulated firm, given the changes that are afoot in lower value road traffic accident claims. The plans to reform the whiplash claims process are likely to increase the number of MacKenzie Friends and claims management companies carrying out work in this area. It is important that consumers are made aware that if they choose these entities to assist them with their claim instead of an SRA regulated firm, they will be missing out on some of the vital protections should things go wrong. This is particularly important, given that solicitors will soon be able to practice in non-SRA regulated firms, so simply looking for someone badged as a "solicitor" will not necessarily be enough.

Compensation Fund logo

We agree that firms should be required to publicise the existence of the Compensation Fund, and the SRA should work to raise awareness of what this means. This is essential, given the proposals to allow solicitors to work in unregulated firms without the protections of

the Compensation Fund and professional indemnity insurance. It should be a requirement that firms make clear that they are covered by the Compensation Fund. Conversely, those solicitors working in non-regulated firms should be required to make clear that they are not covered by the fund.

Professional Indemnity Insurance

In relation to professional indemnity insurance, we believe that if a firm holds itself out to be one which specialises in high value, complex claims, they need to satisfy the potential client that they have sufficient cover in place. Not only should firms have PII cover in place, it should be set at the appropriate level for the types of case that the firm handles.

Complaints

We agree that firms should make prospective clients aware of their right to complain to the Legal Ombudsman. Firms should also be required to publish details of how a person can make a complaint against them.

Creating a digital register

We agree that a digital register should be published.

Alongside information on regulatory and disciplinary decisions, there should be information about the accreditations held by individual practitioners and firms, and any positive feedback provided by previous clients. Providing information about disciplinary action on its own will not necessarily help the consumer to determine the quality of the legal services provider.

Publishing areas of practice and complaints data

In relation to publication of complaints, we agree that candour is the best option.

Individual solicitors working outside LSA-regulated firms

We agree that solicitors working outside LSA-regulated firms should be required to publicise that they are not required to have professional indemnity insurance, and that their clients will not have access to the Compensation Fund.