

LORD CHANCELLOR'S DEPARTMENT

PAYMENT INTO COURT IN SATISFACTION OF CLAIMS

A RESPONSE BY THE ASSOCIATION OF PERSONAL INJURY LAWYERS

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1. The Association of Personal Injury Lawyers (APIL) was formed in 1990 and represents more than 4900 solicitors, barristers, legal executives and academics whose interest in personal injury work is predominantly on behalf of injured claimants. The aims of the association are:
 - To promote full and prompt compensation for all types of personal injury;
 - To improve access to our legal system by all means including education, the exchange of information and the enhancement of law reform;
 - To alert the public to dangers in society such as harmful products and dangerous drugs;
 - To provide a communication network exchanging views formally and informally.

2. APIL welcomes this opportunity to respond to the Lord Chancellor's consultation paper on payments into court in satisfaction of claims. In summary, we believe that the current system of payments into court has been one of the major successes of the civil justice reforms and that it should be retained in its current form subject to some administrative rearrangement.

Should the system of payments into court to support offers to settle claims be retained in any form?

3. We strongly believe that the current system of payments into court to support offers to settle should be retained. The advantages of payments into court were clearly explained by Lord Justice Simon Brown in Amber v Stacey ((2000) 150 NLJ 1755) where he stated:

“There are to my mind compelling reasons of principle why those prepared to make genuine offers of monetary settlement should do so by way of part 36 payments. That way lies clarity and certainty, or at any rate greater clarity and certainty than in the case of written offers...Payments into court have

advantages. They at least answer all questions as to (a) genuineness, (b) the offeror's ability to pay, (c) whether the offer is open or without prejudice, and (d) the terms on which the dispute is settled."

4. Part 36 payments increase the likelihood of settlement in several respects and, therefore, operate in the interests of claimants, defendants and, more generally, society. Firstly, a defendant intending to make a payment into court must concentrate his mind on a realistic valuation of the claim. If the valuation is not realistic, the potential cost advantages of making a payment in will be lost. Claimants are, of course, more likely to accept realistic offers and so the current system leads to the increased settlement of claims.
5. Secondly, payments into court afford the claimant some much-needed security. Following a payment in, the claimant can rest assured that the defendant has sufficient money to meet the claim and that the money will be easily obtainable without the need for enforcement proceedings as the money is held by an impartial third party, i.e. the Court Funds Office. This security is extremely important for injured claimants and again will encourage settlement between the parties, which is in the interest of all.

Would written offers to settle provide an adequate alternative?

6. As will be clear from our answer to the above question, we do not believe that written offers to settle can provide an adequate alternative to payments into court. This is quite simply because they do not offer any of the advantages of payments into court noted above, such as security. Recent events, such as the collapse of Chester Street Insurance Holdings, demonstrate the advantages of payments in as compared to written offers. Written offers from the representatives of Chester Street did not provide any protection to claimants where settlements had been reached before insolvency but where the settlement sums had not actually been paid. Claimants in this position were treated in the same way as other unsecured creditors and in need of issuing enforcement proceedings for their money, whereas if there had been a

payment into court, the claimant was treated as a secured creditor. This issue is extremely important in view of the fact that several large employers and insurance companies have collapsed recently, i.e. Turner & Newall, Railtrack, Independent Insurance and Drake Insurance.

Should a dual system of payments into court and written offers (which would not require the permission of the court to benefit from the costs provision of the Civil Procedure Rules Part 36) be used for claims involving money under the CPR?

7. We do not support a dual system of payments into court and strongly believe that the current system, which is working well to promote settlement, should be retained in its current form subject to some administrative re-arrangement outlined below. Our perception is that both the insurance industry and their representatives believe that payments into court are working well. Despite this, if a dual system were in place some defendants may prefer to make written offers as opposed to payments in. This would undermine the current system which is working perfectly well to promote the early settlement of claims.

Should the Court Service retain responsibility for the payments in satisfaction system?

8. In response to the LCD's consultation paper on the modernisation of the civil courts, we noted our support for the centralisation of administration on the grounds of increased efficiency. In a similar vein we also support the proposal that the Court Service should retain responsibility for payments in satisfaction with a streamlined Court Funds Office. We agree that the proposed centralisation would deliver a more efficient, cost effective service provided both the Court Service and Court Funds Office have a sufficient number of adequately trained staffed.

Should litigants or their representatives in all cases (i.e., both High Court and county Court) send payments, to support offers to settle claims, direct to the Court Funds Office?

9. The Court Funds Office specialises in this work and provided that it is sufficiently staffed, direct payments to the Court Funds Office in all cases would offer prospects of improved service for county court litigants. It would also prevent the double handling of payments that currently takes place.

Should one of the following alternative financial arrangements be used for handling payments in satisfaction:

- **Bankers' orders/guarantees**
- **Escrow accounts**
- **Credit card/credit card impress**

10. We do not believe that any of the suggested alternative arrangements should be used for handling payments in satisfaction of claims. We agree with the various disadvantages highlighted by the Lord Chancellor's Department in relation to each of the financial arrangements. We shall not repeat all of the disadvantages identified here but merely note that the alternatives would not appear to offer the claimant the same financial security that the current system offers to them. In essence, we believe that the current system works perfectly well and, indeed, is one of the biggest successes of the civil justice reforms and, for this reason, should not be altered in any way.