ASSOCIATION OF LAW COSTS DRAFTSMEN

COSTS NEGOTIATORS: THE WAY FORWARD

A RESPONSE BY THE ASSOCIATION OF PERSONAL INJURY LAWYERS

NOVEMBER 2001

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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 would like to thank the Association of Law Costs Draftsmen for presenting the opportunity to comment on the operation and regulation of costs negotiators by its letter of 28th September. In summary, we believe that all individuals involved in calculating, negotiating and recovering legal costs should be trained, regulated and insured. This is because both the recovery of costs and the conduct of costs negotiators have a potential impact on the ability of injured victims to achieve access to justice.

3. Costs negotiators have caused our membership concern for several reasons. Firstly, we agree with the Association of Law Costs Draftsmen's conclusion that the costs negotiator's usual method of charging fees, i.e. by costs savings made, is champertous. We do not believe that it is in the interests of justice for champertous individuals to be allowed to appear before a court. Secondly, we share the association's perception that costs negotiators often have little understanding of either the law of costs or the circumstances of the cases in which they are negotiating.

4. Thirdly, our members' experience is that the costs negotiators often make low offers on costs. This means that the issue of costs becomes highly adversarial

in many cases and this often leads to the issue of Part 8 proceedings. This is regrettable in view of the fact that early indications suggest the pre-action protocols are working extremely well to encourage cooperation between the parties and settlement on issues of liability and damages without recourse to litigation. Anecdotal evidence from our members suggests that they often successfully recover the costs claimed in Part 8 proceedings in any event, demonstrating that such proceedings are often unnecessary as well as regrettable.

5. Finally, if many costs negotiators continue to make low offers on costs there is a severe risk that the ability of injured victims to achieve access to justice will be impeded. Low offers may lead to unrecovered costs in a significant number of cases. Whilst, at the moment, claimant solicitors usually bear the burden of any unrecovered costs, they are not obliged to do so. The higher the frequency of unrecovered costs, however, the bigger the risk that solicitors will have to pass those unrecovered costs on to their injured clients. The current practice of costs negotiators could, therefore, result in claimants meeting legal costs out of damages that are, in fact, awarded to meet the costs of, for example, care and medical treatment.

6. In view of the seriousness of the problems caused by the conduct of many costs negotiators as outlined above, and the potential impact on access to justice, we believe it is imperative that all individuals involved in calculating, negotiating or recovering costs are adequately trained, regulated and insured.