

HM TREASURY CONSULTATION

IMPLEMENTING THE FOURTH MOTOR INSURANCE DIRECTIVE

A RESPONSE BY THE ASSOCIATION OF PERSONAL INJURY LAWYERS

JULY 2002

The executive committee would like to acknowledge the assistance of the following people for assisting with the preparation of this response:

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1. The Association of Personal Injury Lawyers (APIL) was formed in 1990 and represents around 5000 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 promote health and safety;
- 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 comment upon the implementation of the Fourth Motor Insurance Directive. Whilst many of the issues raised relate to the costs of implementation, APIL would like to comment upon the following:

- The cost of accessing information from the Information Centre;
- The requirement on insurance undertakings/claims representatives to provide a “reasoned” reply in certain circumstances;
- The sanctions imposed where insurance undertakings/claims representatives do not provide a ‘reasoned reply’ as required;
- The extension of rights within the Directive to UK residents who suffer loss or injury in motor accidents in the UK.

The Cost of Accessing Information from the Information Centre

3. The Treasury seeks views on the need for the Motor Insurance Information Centre (MIIC) to make a reasonable charge for responding to enquiries from accident victims and the level at which any charge should be set. In ensuring that access to justice is achieved in all cases, it is vital that all injured victims are able to obtain the information they need to pursue a claim where they know or suspect they have been negligently injured. Where charges for information are made there is always a risk that poorer victims will be unable to afford those charges and, in those situations, access to justice may be impeded. For this reason, APIL submits that no charge should be made by the MIIC for responding to enquiries from victims. If a charge is to be made, however, it must be as low as possible and it must be recoverable from the defendant if the victim's claim is successful, as the victim would not have incurred the charge had the defendant not been negligent.

“Reasoned” Replies

4. In accordance with article 4(6)(b) of the Directive, insurance undertakings/claims representatives will be required in certain circumstances to provide a reasoned reply to the points made in the claim within three months. Whilst APIL welcomes this provision, we have some concerns about the definition of the word ‘reasoned’, as it is not the same as being required to provide a “reasonable” reply. For example, a defendant may allege that the victim was wholly or partly to blame for the accident. This is reasoned, but it may not be reasonable on the facts of the case. We submit that the effect of this requirement would be much more productive if the word ‘reasoned’ were replaced or complimented by the word ‘reasonable’ in the UK transposing legislation. It would, alternatively, be useful for the legislation to define the word ‘reasoned’ to prevent future discussion, as it is not defined within the Directive.

Sanctions

5. Article 4(6) starts by requiring Member States to back the duties outlined in the article with “appropriate, effective, and systematic financial or equivalent administrative penalties.” The article concludes by stating that “Member States shall adopt provisions to ensure that where the offer is not made within the three-month time-limit, interest shall be payable on the amount of compensation offered by the insurance undertaking or awarded by the court to the injured party”.
6. We do not think that the article can be interpreted to the effect that the payment of interest is the only sanction required. Whilst interest is a sanction that is expressly required by the Directive, Member States are still required, or are at least given the discretion, to introduce a range of other “appropriate, effective and systematic financial or equivalent administrative penalties”. We stress this because we do not think requiring interest to be paid on compensation offered or awarded alone will be a sufficient encouragement to comply with the article’s requirements. We hope that the Treasury will consider other appropriate sanctions when drafting the relevant UK legislation and liaise with the Lord Chancellor’s Department on this.
7. It is also necessary to consider the level of interest that should be payable under the article. We submit that it should be equivalent to the level of interest payable in connection with Part 36 of the Civil Procedure Rules, i.e. 10% above bank base rate.

The extension of rights within the Directive to UK residents who suffer loss or injury in motor accidents in the UK

8. APIL believes that the right of direct action should be extended to UK residents who suffer loss or injury in motor accidents in the UK. This is for all of the reasons identified in paragraph 52 of the consultation paper. For example, not only, would this create equality but it would also prevent the

frustration caused in certain cases from having to rely on the co-operation of the driver. In addition, it can sometimes be difficult to locate the responsible driver for the purpose of serving proceedings. Whilst a legal representative may contact the driver shortly after he has been instructed by his injured client in accordance with the address given at the scene of the accident, this address may change some time later, without the representative's knowledge. Allowing a legal representative to serve proceedings directly on the relevant insurance company would avoid such problems in locating the driver. Direct action would further assist in avoiding convoluted enforcement proceedings. At the moment it is necessary to enforce the judgment against the driver, despite the fact that it is the insurance company that actually pays the compensation due.

9. Finally, APIL submits that UK residents who suffer loss or injury as a result of a motor accident in the UK should have the same rights of access to information as residents of other Member States who suffer injury in the UK. In responding to the DETR's consultation on the Motor Insurance Database in May 2001, we submitted:

“We strongly believe that the database should be accessible by claimants and/or their legal representatives. Victims of road traffic accidents often have difficulties ascertaining whether the responsible driver was insured and, if so, obtaining the correct insurance details due to, for example, the provisions of false details at the scene of the accident. Much time and effort can be wasted in resolving those issues. Allowing claimants to search the database would greatly alleviate such burdens.”

We would like to reiterate that point in this context and note that access to the Motor Insurance Database, which is maintained by the MIIC, would become even more important if the right of direct action were extended to UK residents injured in a motor accident in the UK.