

September 30, 2002

Ms R Hewitt
Lord Chancellor's Department
Civil Justice Division
3.13 Open Plan
Selborne House
54/60 Victoria Street
London
SW1E 6QW

Dear Ms Hewitt

Statements of Truth – Schedules of Special Damages

Thank you for your letter of August 2, 2002 seeking our views on the proposal to append a statement of truth to amended schedules of loss in personal injury cases. APIL has no particular objections to the proposal, but we consider that any requirements of the claimant in respect of the amended counter schedule should apply equally to the defendant. In addition, a statement of truth must already be appended to other pleadings, including the original schedule of loss, and we see no reason why amended schedules of loss should be treated differently.

It is, of course, important that the claimant understands what is being claimed on his behalf. It is true that the claimant relies on the advice given to him by his legal representatives and other experts. We do not believe, however, that reliance on this advice would cause problems for the claimant in signing a statement of truth in so far as it is a statement of his belief in the truth of the instructions given by him to lawyers and experts to prepare the schedule. The client cannot, of course, state that the schedule is true as the statement will also be based on legal principles and expert opinion of which the client will have no understanding or knowledge. For this reason, we suggest that the statement of truth for schedules should be a revised, to state for example:

“The [claimant] believes that the instructions given by him to experts and his legal representatives and relied upon by them in the preparation of this schedule are true”.

We are less convinced that appending a statement of truth would prevent what are referred to in the letter as “inflated claims”. In addition, we do not agree with the implication that claimants currently “inflate” claims routinely. The claimant and his legal representatives operate in an adversarial system where each side puts forward their case based on supporting evidence, and it is for the judge alone, having considered all the evidence, to decide the level of damages the claimant receives. It does not, therefore, necessarily follow that if a claimant receives less than claimed that the claim was inflated. Similarly, the fact that a claimant obtains higher damages than those set out in a counter schedule supported by evidence, does not imply that the defendant has acted improperly in failing to put forward a true evaluation of the claim. A statement of truth would not and should not prevent legal representatives from acting in the best interests of their client in our adversarial system by seeking to put forward the client’s best case based on supporting evidence. If a claim has been inflated unreasonably this would more appropriately and more effectively be addressed within the context of Part 36 and/or appropriate issue-based costs orders.

Yours sincerely

David Marshall
Vice-President, APIL