CLINICAL DISPUTES FORUM

DRAFT GUIDELINES ON INSTRUCTING SINGLE JOINT EXPERTS

A RESPONSE OF BY THE ASSOCIATION OF PERSONAL INJURY LAWYERS

DECEMBER 2002

The Association of Personal Injury Lawyers (APIL) was formed in 1990 by claimant lawyers with a view to representing the interests of personal injury victims. APIL currently has over 5300 members in the UK and abroad. Membership comprises solicitors, barristers, legal executives and academics whose interest in personal injury work is predominantly on behalf of injured claimants. APIL does not generate business on behalf of its members.

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1. APIL welcomes this opportunity to comment on the CDF's draft guidelines on instructing single joint experts and supports fully the work of the single joint experts group. Whilst this group contained an APIL representative, we would like to make the following additional comments that represent that views of key clinical practitioners within the association.

Q1: Who should have the responsibilty for initiating particular actions ?

2. The claimant has the burden of proving his claim and relies heavily on expert evidence in doing so. For this reason, APIL believes that the claimant should be wholly responsible for drafting the letter of instruction.

Q2: Do people agree with the formulation at section 7 of the guidelines regarding questions to experts ?

3. APIL believes that each party should be able to ask a single joint expert the questions they would be able to ask of an own party expert.

Q3: Do consultees feel that the guidelines suggested for conference and trial meetings are workable and appropriate?

4. APIL agrees that the guidelines in respect of conference and trial meetings are workable and appropriate.

5. In addition to answering the CDF's specific questions, APIL would like to make the following additional points:

- In some cases, the parties rely on a mixture of own-part and single joint experts. Where this is the case, the court timetable usually allows for the single joint experts to report first and they do not usually see the claimant's lay or own-party expert evidence or the defendant's evidence. This is undesirable and it would be useful for the guidance to allow for single joint experts to review the claimant and defendant lay and own-party expert evidence and produce an addendum to their report if appropriate.

- It would be helpful if the guidance provided that the parties are at liberty to apply to the court in the event that they are unable to reach agreement generally, or on specific points. For example, in Chantharasy (a child) and Chantherasy v Thomas (Royal Courts of Justice, 7 January 2002), the parties had agreed the identity of a single joint expert in occupational therapy but were unable to agree on the matters within an occupational therapist's expertise. Master Ungley, who heard the matter, was able to provide useful clarification on this point, which allowed the parties to continue.

- In paragraph III(2)(iii) it is stated that "fee notes should clearly state both the total fee charged in the matter and the share of the fee to the party being billed". To minimise any arguments on costs, we believe it would be helpful if the guidance also required fee notes to identify and quantify time spent, so that such notes would state, for example, that *x* amount of time had been spent perusing medical records.

- In paragraph III(4)(ix) it is stated that "parties should agree on whether they want to receive copies of all communications to the expert at the time when they are made, or want to be periodically updated". It would be helpful if this paragraph

also stated that in default of any such agreement, communications should be copied at the time they are made. This could save any potential confusion.