THE LAW SOCIETY

CONSULTATION ON FEE SHARING

A RESPONSE BY THE ASSOCIATION OF PERSONAL INJURY LAWYERS

SEPTEMBER 2003

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 4,800 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.

APIL's executive committee would like to acknowledge the assistance of the following in preparing this response:

David Marshall	President, APIL
Colin Ettinger	Vice-President, APIL

Any enquiries in respect of this response should be addressed, in the first instance, to:

Miles Burger
Policy Research Officer
APIL
11 Castle Quay
Nottingham
NG7 1FW

Tel: 0115 958 0585
Fax: 0115 958 0885

E-mail: miles.burger@apil.com

FEE SHARING

1. The Association of Personal Injury Lawyers (APIL) was formed in 1990 by plaintiff lawyers with a view to representing the interests of personal injury victims. APIL has currently over 4800 members in the UK and abroad. Membership comprises solicitors, barristers, legal executives, and academics whose interest in personal injury work is predominately on behalf of injured claimants. APIL does not generate business on behalf of its members. The aims of the association are:

    - To ensure accident victims receive fair, just and prompt compensation;
    - To improve access to our legal system by all means including education, the exchange of information and the enhancement of law reform;
    - To provide a communication network exchanging views formally and informally;
    - To campaign for improvements in personal injury law to benefit injured claimants;
    - To promote wider redress for personal injury in the legal system.

2. APIL welcomes this opportunity to express its views on fee sharing. We should stress from the outset that our views relate to the operation of fee sharing in personal injury (PI) practice only.

3. In summary, APIL broadly agrees that fee sharing by solicitors should be allowed, within the context of the amended rules. This position can be seen to agree and widen the acceptance of new business models, such as multi-disciplinary partnerships (MDPs), which was expressed previously in our paper on competition in the professions (November 2002). The injection of external capital investment into PI practices will help deliver better services to injured victims. We feel, however, that this influx of funds should not be at the expense of legal impartiality. We feel that injured

clients should be able to feel confident that their legal representatives are acting in their best interests.

Fee sharer able to specify service delivery standards

4. APIL feels that the fee sharer should be able to specify service delivery standards as a condition of capital introduction, but with several provisos. The service delivery standards established should in no way influence the way solicitors settle or handle cases. This can be seen as a general duty for service standards not to be based on the need to maximise profits but on the duty to properly represent the needs of the injured client. The level of service delivery should be guided by the Law Society's practice standards. It should also be specified that any service delivery standards must exceed or match those set down in the Law Society's code of professional conduct.

15 per cent cap

5. APIL deems that the figure of 15 per cent of annual gross fees may be too high in the context of fast track personal injury work. With many personal injury practices likely to be affected by prescribed costs 15 per cent of annual gross profits might be most of the profit in low margin work. Thus this need for money will mean that firms could be held financially 'captive' to the wishes of funders.

Disclosure to clients

6. In dealing with disclosure of fee sharing arrangements to clients, APIL feels that a distinction should be made in relation to what type of fee sharing arrangement is taking place. In a fee sharing agreement where general capital is introduced to a firm, and thus applies to all clients, there is no reason to disclose. Fee sharing arrangements, however, which may involve the introduction of capital into a specific project or case, APIL feels

disclosure may be appropriate, as failure to disclose may lead to improper influence.

7. In respect of the latter example, APIL is particularly concerned about the possibility of claims management companies (CMCs) entering into fee sharing arrangements with large firms, and funding only their personal injury cases. This may lead to CMCs dictating the level and type of personal injury claims that should be processed. This situation would contradict the Solicitors Practice Rule 1 concerning the independence of the solicitor.

Solicitor to notify Law Society of fee sharing arrangement

8. APIL considers that the lack of a regulatory framework for possible introducers of capital means that the Law Society will have to closely monitor the specific details and circumstances under which fee sharing arrangements operate. Thus APIL supports the use of the second option proposed (paragraph 15) stating that solicitors should report annually complete details of fee sharing agreements, including the actual percentage of gross fees which have passed to the fee sharer and the identity of the fee sharer.

Conclusion

9. APIL provisionally supports the proposals of the Law Society in regards to fee sharing. We feel, however, that the needs of the claimant must always be paramount. Thus fee sharing arrangements must be very closely monitored with any evidence of commercial pressure being applied by external funders swiftly and decisively acted upon.