

THE DEPARTMENT OF CONSTITUTIONAL AFFAIRS (DCA)

**CIVIL PROCEEDINGS BY OR AGAINST THE CROWN
– A REVIEW OF CIVIL PROCEDURES**

**A RESPONSE BY THE ASSOCIATION OF PERSONAL INJURY LAWYERS
(APIL11/04)**

APRIL 2004

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 5,400 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.

The aims of the Association of Personal Injury Lawyers (APIL) 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 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;
- To promote health and safety.

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

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CIVIL PROCEEDINGS BY OR AGAINST THE CROWN

Introduction

1. APIL welcomes the opportunity to put forward its comments in response to the Department of Constitutional Affairs (DCA) consultation on civil proceedings by or against the Crown. In summary, APIL provisionally supports the suggested revocations of special procedures afforded to the Crown, and feels that such a 'levelling of the playing field' is long overdue. For example, the removal of the Crown's discretion in deciding the venue for a case will allow courts to choose to hear cases within more regional locations. The use of the Civil Procedure Rules (CPR) general provisions in the statement of case, with the required additional information concerning the Crown, also means that the claims process is more streamlined and effective. Finally APIL proposes that personal service on the Crown via service on the relevant treasury solicitor appears to work and should be retained.
2. APIL is concerned, however, about the removal of certain enforcement provisions, which may leave claimants vulnerable to non-payment of a court order by the Crown. Further to enforcement provisions, we are also worried about the lack of individual liability under any order of payment by the Crown.

Consultation Questions

Question 1 Do you agree that the Crown should no longer have the power to decide the venue for a case and that instead this should be a matter for the court to decide? If not please explain why not and who you consider should exercise this power.

3. APIL agrees with the consultation document's proposal that the venue for a case should be decided by the court. There is a tendency for the Crown to choose to hear cases in the High Court in London, even though this may not be the most effective venue, in particular for regional law firms. We believe that the court is an appropriate body to make such a decision because it will be able to exercise its discretion in consideration of all the facts and the criteria laid down in the Civil Procedure Rules (CPR)¹. The use of the court's discretion appears to work well in other civil cases, and such a stipulation with regard to cases involving the Crown can only improve matters.

Question 2 Do you agree that the general provisions on the information to be contained in the claim form should apply, and that CPR rule 16.2 should specify the additional information required where the claim is against the Crown? If not please explain why.

4. APIL considers that the general provisions about the statements of case, as required by Part 16 of the Civil Procedure Rules (CPR) should apply to claims against the Crown. We also agree that there should be a requirement that the department and name of the officers of the Crown concerned should be included within the claim².
5. APIL believes that this additional information will help to streamline the claims process. Also by having all the necessary information in a single claim form, it will be easier to identify the relevant Government

¹ In particular, see CPR 30.3

² See Civil Procedure Rules (CPR) 16.2

department concerned and this simplification will further help speed up the process.

Question 3 Do you agree that personal service on the Crown should not be allowed? If not please explain why not.

6. APIL believes that personal service on the Crown via the serving of documents on the relevant Government departmental treasury solicitor appears to work and as such should continue. For example in a case of personal injury negligence within the military, there is a strong possibility that the negligent person – i.e. the person to be served upon – will be stationed overseas and will not be easily contactable. By attempting to track down and serve on the person directly there would be considerable room for error and may result in the claim being struck out due to ineffective service.

Question 4 Do you agree that the rules relating to counter claims and set-offs involving the Crown should be retained? If not please explain why not.

7. APIL considers the current rules relating to counter claims and set-offs involving the Crown as sensible and so should be retained.

Question 5 Do you agree that in future summary judgment against the Crown should be permitted, but only after the time for filing a defence has expired. If not please explain why not.

8. APIL fully supports the proposal that future summary judgments against the Crown should be permitted, subject to the expiry of a defence. We are pleased to note that this procedural alteration places the Crown on an 'equal footing' with other civil cases.

Question 6 Do you agree that the rules relating to summary applications in revenue matters should be retained? If not please explain why not.

9. APIL represents the views and experience of personal injury practitioners, and while the proposals seem sensible, we do not have the specialist knowledge to comment further at this time.

Question 7 Do you agree it should be possible to obtain a default judgment against the Crown? If not please explain why not.

10. APIL agrees that it should be possible to obtain a default judgment against the Crown. We feel that it is vitally important that there should be a level playing field between the parties in relation to civil litigation, and that the above proposal achieves this by removing privileges which have been enjoyed by the Crown for far too long.

Question 8 Do you agree that default judgments against the Crown should only be made after a Master or district judge is satisfied that service on the Crown has taken place properly?

11. APIL concurs with the proposal that default judgments against the Crown should only be made after a Master or district judge is satisfied that service on the Crown has taken place properly. APIL's response to this question is conditional on the views expressed in answer to question 3 (above).

Question 9 Do you agree that the new rules should continue to disapply the rules on enforcement? If not please explain why not.

12. APIL is concerned that it appears that there is no sanction available to claimants if a court award is not honoured by the Crown, with the assumption that *"the Crown can be expected to comply with court*

orders”³. The reason for this presumption is that the Crown “*is unlikely not to have the resources to do so*”⁴. While APIL admits that it would be unusual for a Government department not to comply with such a court order, an APIL member has had an experience with a local authority where a court order needed to be enforced. This demonstrates that there is a need for the ability to enforce a court order on Government funded institutions, regardless of the presumption.

13. In order to cater for the possibility that the Crown may not honour a court order, APIL proposes that the writ of Fieri Facias⁵ should be retained as an enforcement provision of last resort. The reason for this is that there would appear to be no point in obtaining a charging order on any property and it is unlikely that the Crown could be compelled to pay. The writ of Fieri Facias would enable a bailiff (in the county court) or a sheriff (in a high court) to seize goods to the value of the court order.

14. APIL is further concerned that “*no person shall be individually liable under any order for the payment by the Crown*”⁶. In order to rectify this problem we propose, in reflection of the aforementioned procedure concerning serving on the Crown, that the appropriate treasury solicitor should be held personally responsible for any payment order against the Crown. This would ensure that any failure to pay or act upon a court order would result in the treasury solicitor being prosecuted for contempt of court.

Question 10 Do you agree that the special provisions relating to postal packets should be retained? If not please explain why not.

15. APIL feels that the question is unclear, and as such we do not wish to comment any further at the present time.

³ Paragraph 30

⁴ Ibid

⁵ Detailed in Order 47 of the Rules of the Supreme Court (RSC)

⁶ Section 25 (4) – Crown Proceedings Act 1947

Conclusion

16. In conclusion, APIL is fully supportive of the stated intention within the consultation document that the proposed changes “*will place the Crown on a more equal footing with those who make claims against the Crown or defend claims against the Crown*”. This support, however, is conditional on the implementation of APIL’s suggested amendments detailed above. The combined changes will ultimately be to the benefit of all litigants.

17. While APIL considers the majority of the consultation a positive move forward, we are disappointed that the opportunity to tackle the issue of Crown immunity has not been taken. If the Government genuinely intends to place the Crown on an “*equal footing*” to other litigants, it is vital that the Crown is equally as liable as other litigants. In addition to this issue being dealt with in civil law APIL would also like to see the elimination of Crown immunity within the criminal arena, in particular in respect of corporate manslaughter.