

03 November 2006

Department for Constitutional Affairs  
Claims Management and Private  
Funding Policy  
Selborne House  
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London  
SW1E 6QW

By email to: [claimsmanagementregulation@dca.gsi.gov.uk](mailto:claimsmanagementregulation@dca.gsi.gov.uk)

Dear Mr Rousell,

**Compensation Act 2006 – consultation on the draft code of practice for trade unions**

Thank you for inviting APIL's participation in the above consultation.

In relation to the specific principles set out in the draft code, APIL would comment as follows:

**Paragraph 2.4**

We note that this subparagraph places a new requirement on trade unions, who have not, historically, been expected to advise members of alternative available forms of funding.

APIL would recommend inserting the word 'routinely', to allow for the exceptional charging of fees where members are acting unreasonably ("where fees are routinely payable by the member").

Most trade unions do not charge members any fees in respect of a claim as a matter of course. It is not uncommon, however, for unions to pass on fees to members perceived to be driving up cost unnecessarily, by giving unreasonable instructions (e.g. seeking second or third medical opinions).

Such a policy of charging unreasonable clients is relied upon only in a small minority of cases, to protect the interests of a union's wider membership and justice. Notwithstanding, the practice would not be permissible under the current wording of paragraph 2.4, unless alternative methods of funding had been discussed with the client at the outset. Inserting the word "routinely" would retain the provision in respect of unions who usually charge members for claims, without extending it to the very specific, justified exceptions described.

#### **Paragraph 4**

APIL would recommend prefacing the proposed paragraph with the words "Where the member is not represented by a solicitor...".

The paragraph sets quality standards for advice trade union staff or representatives give. The principles may be appropriate in relation to advice unions offer without or before the involvement of a solicitor, but are at best unnecessary when trade unions involve qualified legal practitioners.

Trade unions refer cases to legal practitioners precisely because it would not be feasible for unions to train every elected workplace representative in the intricacies of personal injury law. The involvement of solicitors is in itself a means by which unions ensure the quality and accuracy of advice. Standards are then upheld by Law Society regulation and complaints mechanisms.

APIL therefore believes that any requirements to maintain or monitor the competence or conduct of union representatives is unnecessary if not misplaced where unions defer the provision of advice to legal professionals. The principle of paragraph 4 should, in our view, only apply when trade union employees or representatives take it upon themselves to advise or represent members.

While it might have been appropriate to lay down basic principles for the referral process (i.e. requiring the ability to recognise limitation periods and the need for professional legal advice) the terms of paragraph 4 are not, in our opinion, appropriate for these cases.

APIL would also question how feasible it will be in practice for trade unions to "monitor" advice elected representatives give to members in the workplace.

#### **Paragraph 5**

To improve clarity and avoid misinterpretations, APIL would suggest changing the word order to "service received directly from the Trade Union in relation to a claim" (from the current phrase "service in relation to a claim received directly from the Trade Union"). This wording better expresses the restriction of the clause to services provided by a trade union only, as opposed to solicitors' services which are not the subject of trade union complaints procedures.

**Paragraph 6.1**

APIL would recommend extending the requirement to retain documentary records to six years. This is in line with regulation for other agents. As the limitation period for members to bring negligence claims against a trade union would be six years from the conclusion of the claim, preserving records this long might protect the interests of unions as well as those of members. The additional administrative burden of retaining records longer should be limited, and entirely proportionate to the potential benefit.

I trust the above comments are self-explanatory, and hope they will be helpful in your design of the final code. Should you have any questions, or queries, about APIL's response, please contact me on 0115 938 8710 or by e-mail at: [almut.gadow@apil.com](mailto:almut.gadow@apil.com).

Yours sincerely

Almut Gadow  
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