

Northern Forum: 14.06.11

Introduction given by Bridget Collier – Co-ordinator of North West Group

- Welcomed Deborah Evans, Chief Executive, previously of Legal Complaints Service.

PI Practice Developments – latest on costs and funding: Brett Dixon

- Additional Liabilities

Pankhurst

Adds pressure if ATE in place

Fixed success fee in certain cases – part of the agreement and would even out for Claimant Solicitors

Additional liabilities are going to be with us until the government decides what to do about them.

There are a series of cases which give us an idea as to how the Courts are thinking:

- **Redwing:** penalty for not notifying of funding – no uplift
- **Sousa:** is it reasonable to enter into a CFA? CPR 45 standard test
- **MGN:** defendant costs draftsmen will rely on this case
- **Thornley:** funding dilemma: CFA can be entered into when BTE ends – take risk into account when setting success fee
- **LXM:** legal aid was available. The question is was it reasonable to do so? What are the advantages and disadvantages? Not unreasonable. Defendant went for every argument they could.
- **Hunt:**
- **Robinson-Tait:** failure to serve Notice of Funding – if you're routinely giving main substance if the information in the letter of claim and you're not serving notice of funding it isn't complete, there is hope. Serve the NOF ASAP however.
- **Kris M S:** if not prepared to release information you are within your rights to ask for lower premium
- **Parker:** court should not interfere with underwriters assessment

Damages: Edwina Rawson

Interim Payments:

Cobham: Court will ask 2 questions: it is likely the trial judge want to make periodical payments order? And what would the trial judge award as a lump sum at the hypothetical trial?

Preston: living in rented house and wanted to buy it for £800K – Judge gave £650K and said adaptations can wait.

Kirby: application for interim payment must be made before the money is spent.

Fatal accidents:

Watson: Court – statute made it clear that a claim only arose on death.

Care:

Sowden: private v. NHS.

Peters: claimant not forced to rely on state funding provided there is no double recovery.

Drake: claim for hospice cases: Court allowed that payment can be made for hospice costs (even when voluntary payment).

Warner: should solicitor have instructed case manager before trial? Solicitor brought Part 20 claim against care expert. Summary Judgment in Care expert's favour.

Earnings:

Palmer: Blamire awards still being seen.

Spotlight on Clinical Negligence: Terrence Donovan

Bolitho: reputable minority

Bailey: causation

Goncalves: tight timeframe

Edwards-Tubb: expert shopping – Court can require you to disclose earlier report

Pankhurst: CFA

Streamlining the process for lower value clinical negligence cases – A proposal from the NHSLA - Abi Jennings

Background to the NHSLA paper: it is a consultation with members including the suggestion of streamlining cases worth less than £10,000.

NHSLA:

- Voluntary
- Piloted
- Upto £25,000
- IT based
- One way costs shifting
- Excludes minors and fatal
- Includes lawyers
- Limitation moratorium
- Acknowledgement within 7 days
- Liability decision given within 28 days – admission, request for report, denial
- Joint expert reports – APIL want joint selection
- Claimant to make first offer on quantum and the NHSLA to have 14 days to respond

Concerns:

- Lack of independence
- Trust needs to be held accountable
- NHSLA staffing
- Monitoring
- Costs – to be discussed – process has to be right before costs decided

Next steps – APIL working group are looking at proposals.

MOJ unsure whether they would adopt NHSLA proposals.

APIL to remain in discussions.

Fee earners who do low value CN work should get in touch with Abi @ APIL.

PI Practice Developments – latest on Procedure – John McQuater

Experts

Edwards-Tubb

- Cannot override privilege
- Court of Appeal – under CPR can force disclosure
- Joint selection route – nominate and don't tell Defendant who you are instructing
- Nominate lots of different experts – all will be jointly selected experts

Part 36

Sutherland

- Court has discretion on the deemed costs order on an offer on liability
- Beware of Widlake decision!

C v. D

- Can a time limited offer be Part 36? Open for 21 days from date of this letter – the relevant period
- 1 year later D purports to accept
- argument: C doesn't want offer to be accepted. Part 36 was time limited and cannot be accepted.
- Court at 1st instance: balance in Part 36 – decided time limited and could not be accepted. D appealed.
- CA: can a time limited offer be accepted? You cannot have time limited Part 36 offers. What does open for 21 days mean? This offer was not time limited, was Part 36 and could be accepted.
 - ❖ Part 36 is there until withdrawn
 - ❖ Time limited offer is invalid
 - ❖ Ask D to clarify any ambiguous offers
 - ❖ Use standard form or ask D to use the form
 - ❖ Par 36.10 provides deemed costs order

Admissions

Woodland

- Denial – then liability conceded – retracts admission
- C applies for Judgment
- D applies for withdrawal of admission
- No new evidence but Judge decided a balance and D can resile the earlier admission

- ❖ **Court can let Defendants withdraw admissions**
- ❖ **D not rely on admissions – get Judgment**