

MEETING NOTES

DATE: 19 September 2011, 5pm – 7pm

SUBJECT: APIL East Anglian Regional Meeting

LOCATION: Ramada Hotel, Bury St Edmunds

ATTENDEES: Ruth Booy, Keiron Campion, Samanthe Collins, Tom Cook, Mark Copley, Simon Davis, Anna Foster, Richard Foyster, Tim Gleave, Jenny Holt, Siobhan McWhinney, Justina Molloy, Adrian Mundell, Jan Parry, Daryl Robinson, Hannah Rutterford (Regional Co-ordinator), Kam Singh, Mick Upton (Regional Secretary), Michael Wangerman, Benjamin Ward, Kerry Wigg, Geoff Young.

1. INTRODUCTION BY HANNAH RUTTERFORD (HR).

HR welcomed everyone to the meeting and introduced the speakers, District Judge Kirby and David Fisher .

HR gave apologies for those attending who had to leave the meeting at half time due to another meeting taking place which they also needed to attend.

2. "WHAT ANNOYS ME ABOUT CLAIMANT SOLICITORS" BY DAVID FISHER (DF), HEAD OF CATASTROPHIC CLAIMS, AXA INSURANCE.

DF gave an insight into the insurer's perspective of personal injury claims.

Lots of claims handlers never see a Claimant lawyer or a Claimant so DF felt that an improvement in dialogue between Claimant solicitors and insurers would help to achieve a better outcome.

DF felt that a Claimant solicitor's aim is to act in the Claimant's best interest and the insurer's aim is to look after the shareholder's interest, yet he felt that there was a common aim, namely to reach a fair and just settlement. Insurers would look do what is best for the Claimant, for example by providing rehabilitation and treatment to help the Claimant achieve a better outcome and by dealing with settlement by various methods of ADR because, in his view, many Claimants did not want to have to go to Court.

DF gave examples of cases where Claimant solicitors have failed to act in their client's best interests by failing to progress claims and by failing to respond to correspondence, even in cases where liability was not an issue. This approach was not uncommon and he felt it was contrary to the interests of the Claimant, but also the interests of those firms' cash flow. DF felt that the approach taken by Claimant solicitors in multi-track cases was generally better than the approach taken in fast track cases.

DF outlined examples of where he felt certain Claimant solicitors carried out work and refused dialogue, to drive up costs so that they were higher when proceedings were issued and taken out of the predictable costs regime.

DF felt there has also been problems since the introduction of the new RTA fixed costs process. There were a number of cases which formed part of what is known in insurer circles as "the 400 club." These are cases where liability has been admitted under the RTA scheme and £400 of costs paid but they have stopped progressing because they have been lodged twice, with different solicitors acting for the same client. DF suspects that these cases are not progressing as there are probably disputes over which firm has the valid retainer with the client.

DF then spoke about his views on the level of fraudulent claims. He referred to a Claimant lawyer who felt that he had only ever seen three fraudulent claims in his career. DF felt that the level of fraudulent claims was much higher. He then went on to discuss some fraudulent claims he had come across in his work. He felt that his views were supported by the contrast between the Department for Transport figures, which showed a 6% decrease in injuries in road traffic accidents, and CRU figures which showed a 17% increase. He accepted that there would be

many legitimate claims where people would be injured and the police would not be informed of the accident, but he felt that there was substance behind the figures.

The insurance industry's suspicion is that there are claims being manufactured and that there are fraudulent solicitors in practice, so he warned solicitors to be careful where they sourced their work from. DF advised solicitors to screen clients cautiously by questioning them carefully about their accounts of the accident, their injury and whether they have been to previous solicitors. He also advised that some firms routinely pay an agency to carry out checks on their clients.

DF felt that both the Claimant and the Defendant industries were on the verge of a big change with the various government proposals such as the banning of referral fees and the Jackson proposals. He felt that in the Claimant field there would be firms who would be winners and others who would be losers and those who would prove to be winners would be those who were lean, efficient and developed their own brand .

DF stressed that solicitors need to improve their cash flow situation to be successful. By collaborating with the insurers and engaging in ADR he felt that solicitors would improve their cash flow and get better financial outcomes.

DF was asked about his views on third party capture. DF said that he was not a great fan of third party capture because he felt that, where there was a question over whether the amount being offered by an insurer was potentially too low or not, there really needed to be independent legal advice to determine whether the amount being offered was too low or not.

DF felt that today's market was forcing almost everything down the referral fee route which he felt was abhorrent. He felt that getting away from the referral fee culture could help in reducing third party capture.

Various insurers are signed up to a code of conduct relating to third party capture. A copy of the code and the signatories are contained on the Association of British Insurers website. He suggested that if anyone comes across a case where it looks like someone has accepted an offer from an insurer in circumstances which breach the code of conduct, it may be worth approaching an insurer to see whether they would be willing to reconsider the claim on an ex gratia basis, as the code is not enforceable. He advised that an insurer may be embarrassed enough to reconsider the case.

3. "A PERSONAL VIEW FROM THE DISTRICT BENCH" BY DISTRICT JUDGE KIRBY (DJK).

DJK gave an update on the changes occurring in Her Majesty's Courts and Tribunals Service and he gave some useful tips on how to help the judge.

DJK outlined that the changes proposed by the coalition Government have been sweeping and are now starting to happen with a vengeance.

Many staff had lost their jobs in the Court system and more were still at threat as a result of various changes in the court system.

Orders are still being typed up in the Basildon Administration Centre and although these are improving, there are still some problems here.

Haywards Heath Processing Centre will shortly close and their work will move to Salford.

DJK suspected that in the long-term it looked as though the Court system was going to become more centralised, potentially with only one County Court per county and with satellite hearing centres. He felt that the regional helpline, like the one in Norwich, may be centralised into one national helpline.

Centralisation has caused some difficulties, the main one being communication. The inability to call a Court direct has meant that fee earners and the Court have found it difficult to contact each other.

DJK gave some useful tips on how to assist the judge and therefore stand a better chance of getting the Order you want.

Tips included getting the other side's views before asking the Court to adjourn a hearing, completing allocation questionnaires fully and exchanging them with the other side, attaching draft directions to allocation questionnaires and, where possible, highlighting the issues which are in dispute between the parties.

Try not to make late applications but if you do, mark them urgent and mark the time and date of any hearing on correspondence. If an application is contested or has a lot of paperwork which needs to be referred to it will not usually be suitable for a telephone hearing. Send in Consent Orders as soon as possible and try to ensure that judges see them as they do not always get passed to the judge in time for a hearing. Once an order has been made it can be emailed or faxed to the Court. Email is preferable.

If documents are faxed to the Court, most of the time, hard copies will not be necessary.

If providing time estimates for hearings, it is better to over-estimate rather than under-estimate.

DJK spoke about the possibility of the low value RTA process being extended to employer's liability cases and clinical negligence. He did not feel that this was a good idea as employer's liability cases, and particularly clinical negligence cases, were often a lot more complex. DJK did, however feel that there would be a curtailing of costs in personal injury claims, particularly in fast track cases.

DJK outlined work which had gone into trying to improve enforcement of County Court Judgments and how it seemed unlikely that the proposals made would now be implemented due to the funding reductions in the court system.

DJK was asked about how the Government's cuts to the Court system and staff had affected morale and whether there was any appetite for strike action. DJK stressed that staff were very loyal and hardworking but he acknowledged that there had been an impact on staff morale. He did not think strikes were likely.

DJK was asked what advice he would give to someone thinking of applying to become a District Judge and whether he would still apply. DJK felt that the role was enjoyable and worthwhile. He said that the process for applying is now more complex than when he applied but anyone thinking of applying could write to the Court and ask to shadow a judge.

4. EC UPDATE

As the meeting over-ran, HR offered to provide an EC update at the next meeting.

MICK UPTON (Taylor Vinters, Cambridge)
Associate

21.09.11