APIL SOUTH WEST REGIONAL GROUP DISCUSSION ON THE CLAIMS PROCESS CONSULTATION PAPER

Question 1. **Do you agree that the small claims limit for personal injuries should remain at £1000 in view of the proposals to improve the claims process? If not, please set out your reasons why and state what you consider the appropriate level would be.**

Comments: Yes agreed.

Question 2. **Do you agree that the small claims limit for housing disrepair should remain at £1000 for disrepair and £1000 for damages? If not, please set out your reasons why and state what you consider the appropriate level would be.**

Comments: No comment – not applicable to PI claims.

Question 3. **Your views are sought on whether the process for dealing with housing disrepair cases can be improved and simplified, and if so, how this could be achieved.**

Comments: See reply to Question 2 above.

Question 4. **Do you agree that the small claims limit for other claims should remain at £5000? If not, please set out your reasons why and state what you consider the appropriate level would be.**

Comments: See reply to Question 2 above.

Question 5. **Do you agree that the fast track limit should be increased to £25,000? If not, please set out your reasons why and state what you consider the appropriate level would be.**

Comments:

- On the basis that consultation paper states few cases actually fall within the £15,000 - £25,000 value bracket, it was suggested that the limit should be increased to £25,000 but perhaps certain cases should be excluded from the Fast Track by reference to a list of specifically exempted cases. However it was queried whether a list of exceptional cases would ever cover every scenario.

- It is our experience that District Judges tend to concentrate on the value of a claim rather than the complexity of the issues involved and there are

problems with inconsistent case management by the Courts. For example District Judges tend to oppose the introduction of psychiatric evidence. Another example is Disease cases where the Courts consider the issues to be "simple" and therefore suitable for the Fast Track when in fact the issues are usually complex.

- It was felt that all Disease cases should fall within the Multi Track.

- There are cases valued below £25,000 which are complex and we would want to see a system in place for such cases to be allocated to the Multi Track.

- If it is agreed that complex cases should be allocated to the Multi Track, who is going to decide whether a case is complex, the practitioners or the Court and what guidance is going to be given as to what would constitute a complex claim? It was proposed that guidance be included in the CPR.

- Concerns were raised over the risk of incurring experts' fees to prove complexity and then being unable to recover such fees if reports are obtained before an Allocation hearing and the Court does not allow the party to rely upon that particular report and /or the matter to be excluded from the process.

Question 6. **Are there any measures that would make the handling of intellectual property claims more efficient and effective? If so please tell us what those measures are.**

Comments: No comment – not applicable to Personal Injury claims.

Question 7. **If the difficulty of dealing with intellectual property cases is not the Court process, what are the difficulties and how could they be resolved?**

Comments: No comment – not applicable to Personal Injury claims.

Question 8. **You may consider that different measures would be appropriate for different kinds of intellectual property – for instance because patent cases involve questions of technology. If you have a response directed to a particular kind of intellectual property only, please say so.**

Comments: No comment – not applicable to Personal Injury claims.

Question 9. **Do you agree that these proposals set out a procedure for dealing with claims which will provide fair compensation in a more timely and cost-effective way? If not please say why and set out any alternative proposals.**

Comments:

- Concerns were raised about a Claimant's personal details being provided to the Defendant in the proposed Claim Form which could give rise to identify theft.

- The Claim Form provides for witness details to be forwarded to the Defendant but during the proposed 15 or 30 working day time limit for the Defendant to communicate a decision on liability, if the Claimant's Solicitor is not supposed to incur any costs, the Solicitor is powerless to obtain any information from the witnesses – a clear inequality of arms.

- Concerns were raised that the Claimant's Solicitor would not be able to get hold of a copy of the Police Accident Report in order to check the facts set out in the report before completing the proposed Claim Form.

- Significant concerns were raised about Defendant insurers being unlikely to respond within 15 or 30 working days because they commonly fail to meet the 3 month pre-action protocol period at the moment, although it was recognised that the insurers could spend the money to enable them to comply in the future.

- Concerns were raised about the temptation to provide as little information as possible in the Claim Form so as to preserve the Claimant's position, and the likelihood that the Defendants may then refuse to deal.

- There would be insufficient time to carry out proper enquiries into the Claimant's legal expenses insurance position within 5 days of taking instructions from the client. If this time limit is to remain in place, surely the indemnity principle should be abolished?

- There are significant concerns as to whether Defendants and insurers will comply with the procedure when they are currently failing to comply with their obligations in predictable costs RTA cases.

- If a Defendant or insurers are given the right to request an extension of time for providing their decision on liability, it should be limited or capped, with a sanction that if the extension of time is not complied with, a case should automatically come out of this procedure.

- It was queried whether the 15 and 30 day time limits are actually too long if the Claimant's Solicitor is not permitted to take any action during that time.

- Settlement pack: There is a potential conflict of interest situation regarding Claimants' offers. This could lead to a significant risk of under settlement when balanced against the Solicitor's interest in being paid for dealing with the case.

- It is noted that the Defendant does not bear any costs risks if the Defendant fails to beat its own settlement offer leading to further inequality.

- It was questioned whether it would be possible to obtain ATE cover in cases where settlement offers have already been made.

- In relation to special damages, it was commented that clients do not always keep wage slips and currently Claimant's Solicitors rely upon the Defendant to provide earnings information. If the Claimant's Solicitor is not given the facility to request earnings information at an early stage from the Defendant, how is the Claimant's loss of earnings claim going to be advanced in the settlement pack?

- The proposed timescales for obtaining medical evidence are too tight and it is anticipated that it will be difficult to obtain good quality medical evidence.

- Concerns were raised that the proposed fees for medical reports are too low and would result in Claimant's Solicitors having to obtain GP reports and there were worries that this would result in the "dumbing down" of medical evidence.

- Where a Defendant is not notified or aware of an accident, for example, MIB claims, highway tripping cases, or some occupiers' liability cases, it was queried whether the Defendants would actually have enough time to respond with a decision on liability.

Question 10. **Do you have any comments or suggested amendments in relation to the draft forms?**

Comments: See replies to Question 9 above.

Question 11. **Do you agree with the above time periods? If not please state why not and what they should be.**

Comments: See replies to Question 9 above.

Question 12. **Do you agree that where the amount of damages cannot be agreed there should be an application to the Court through the simplest procedure possible? Please comment on what that procedure should cover.**

Comments:

- The proposed procedure set out in the consultation paper is effectively the introduction of an assisted Small Claims track by the back door in cases which are valued between £1000 - £2500.

- Claimant's Solicitors would need to assess a case and value greater or lesser than £2,500 at the outset to assess its profitability, which is hard to do at that stage.

- In cases which are valued between £1000 - £2500, the Claimant is effectively never liable for the Defendant's costs and in such cases, there would be no need for ATE. This effectively abolishes the principle of the many successful cases paying for the few unsuccessful cases.

- If a £2500 limit does come into force and the procedure is deemed to be successfully introduced, concerns were raised that the limit might increase to a higher figure with little consultation among Claimant Solicitors.

Question 13. **Your views are sought on whether additional measures could be introduced that would help improve the process where liability is not admitted, or is denied.**

Comments: See above.

Question 14. **Do you agree with the proposals set out in Appendix 6? If not, please say why and set out any alternative proposals.**

Comments: See above.

Question 15. **Do you agree that regional hourly rates should be set and if so, how should they be set?**

Comments: Not dealt with.

Question 16. **Your views are sought on the development of an assessment tool for general damages.**

Comments: Many Defendant insurers already use a computerised tool for assessing general damages (Colossus) and the shortcomings in that system are well known. We believe that the figures derived from Colossus are not updated. It was suggested that APIL members should give statistics for their last 5 cases where damages were assessed by the Court, setting out the general damages figure awarded by the Court, as against the figure offered under Colossus to enable APIL to compile a database.

Question 17. **Do you agree that there is little scope for standardising contributory negligence? If no, please set out how it might be done.**

Comments: It was agreed that cases where contributory negligence is alleged should come out of the procedure, rather than trying to standardise contributory negligence.

This includes cases where contributory negligence is raised in relation to the wearing of seatbelts.

Question 18. **Do you agree with the proposals in relation to costs? If not, please give your reasons and set out any alternative proposals.**

Comments:

- It is difficult to comment without figures for costs of each stage.

- Costs are to be calculated without reference to referral fees, which will deal with the government's intention to get rid of claims farmers, but doesn't address current commercial reality.

- Concerns were raised as to whether there was any intention to build in a system for reviewing the level of costs – if not, there are clear risks.

- If costs are limited to the value of damages, what would happen in cases where causation is not straightforward, for example "all or nothing cases", eg acceleration of back injury cases. However, linking costs to the length of the hearing is not going to solve this problem either.

- Where the value of a claim exceeds £2500, if costs are awarded in relation to the length of the hearing, it is unlikely that a reasonable sum would be recovered as length of hearing is not a reliable guide. It would be better to base costs on the value of a claim.

Question 19. **Do you agree that ATE insurance cannot be justified in the circumstances set above. If not, please give your reasons, identifying the risk that is being insured, and set out any alternative proposals.**

Comments:

- Does the market exist for this sort of cover?

  If a Claimant is not able to obtain ATE cover, where does that leave us with access to justice? It was queried whether any insurers would actually provide cover for low value cases where cover is needed for quantum only hearings.

- In the scenario of a case turning out to be more valuable than the Claimant's Solicitor first thinks, and the case has reached the Directions/Allocation stage, it was queried whether it would be possible to obtain ATE cover and to get it backdated. Would an amendment to the rules (CPR) help with this point regarding reasonable expectation of recovery?

Question 20. **What would be the impact on the ATE market of these proposals?**

Comments: Please see reply to Question 19 above.

Question 21. **Do you agree that the new claims process should apply to all claims for personal injury, except clinical negligence, with a value of less than the fast track limit? If not, please give your reasons and identify which cases should use the proposed system.**

Comments:

- A good starting point is to look at cases where there is a separate Pre-action Protocol – this must be a good argument for taking such cases out of the proposed claims process. The new claims process should not apply to disease cases.

- No part of the consultation paper deals with cases where there are multiple Defendants. These cases should not fall within the claims process.

- It was queried whether Employers Liability cases are ever suitable for the new claims process, along with Public Liability and Occupiers' Liability cases and those involving insolvent Defendants or the MIB.

- It may be more difficult to assess whether a case is valued at around the £2500 mark until such time as medical evidence is available, whereas it seems easier to decide whether a case currently falls within the Small Claims or Fast Track.

- The new claims process would have a significant impact upon legal privilege when it comes to dealing with medical evidence.

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