

Legal Costs

NEGOTIATORS LTD

LCN Newsletter: WINTER 2007

THE FUTURE OF LEGAL COSTS

A recent report published by the International Underwriting Association (IUA) and the Association of British Insurers (ABI) claimed that the total cost of personal injury claims to UK motor insurers has risen by 9.5% per year for the last decade. A major part of this increase is the growth in legal costs associated with claims such that of every £1 paid in relation to a claim, 43p is paid in legal costs. Stephen Haddrill, Director General of the ABI, believes that reform to the claims process is vital to counter this effect and central to any reforms must be a focus on legal costs.

'Key to achieving this (reform) is reducing legal costs, which now account for 10% of every motor premium.' (Law Society Gazette 11th October 2007)

What this report makes clear is that the question of legal costs continues to occupy the minds of many in the insurance industry and the future of legal costs is a debate that insurers need to be aware of.

In April 2007, the Department of Constitutional Affairs published their blueprint for the future of personal injury claims (see LCN Newsletter Spring 2007) in the consultation paper 'Case track limits and the claims process for personal injury claims'. If these reforms are implemented, legal costs for claims up to £25,000 will be fixed at various levels, depending on how the case progresses. The theory is that this will solve all of the problems associated with disproportionate legal costs at a stroke. But what is the reality? As with all reforms, there are a great many unanswered questions.

Firstly, there is no timescale for implementation. The Woolf report was published in 1999 and the first implementation of a fixed costs regime, for small non-litigated road traffic accident claims, came into force in October 2003, 4 years later. A similar time scale for these reforms would not see any effects until 2011. Following implementation, it is unlikely any changes would have retrospective effect and therefore one could be looking at 2012 before the changes start to take effect. Allied to this is the fact that there is real opposition to the proposals from some influential quarters. Thompsons Solicitors, who are one of the largest trade union solicitors in the country, commissioned a survey of trade union members which strongly opposed the proposals. It concluded that the proposals were, 'a multi layered attack on the funding of Trade Union legal services which the Labour Government has pledged to support as a foundation stone to a progressive and fair society'. This level of opposition is sure to cause delay and possibly some major changes before the proposals become fixed. Similarly, whilst the major insurers have offered a generally warm reception to the proposals, the lack of detail at this early stage have lead many to adopt a, lets wait and see stance. Until there are firm proposals as to the detail and amount of fixed costs, it is impossible to foresee whether the insurance industry will welcome the reforms with open arms or fight to oppose them. There is also the salutary lesson of the fixed fees implemented for low value road traffic accident claims. When the figures were fixed in 2003, already based upon historical data, there was concern that the figures would not keep track with inflation. To date, those figures have not been reviewed or increased, and there is a growing dissatisfaction from the Claimant arm of the legal profession that fixed fees simply do not work unless they are subject to periodic review. Unless the new scheme builds in such a review

Legal Costs

NEGOTIATORS LTD

process, one could reasonably expect there to be further opposition from this quarter.

There is also the issue of how flexible the fixed fees will be. With any fixed fee system there is a balance to be struck between certainty and flexibility. There will always be cases that deserve to be treated differently from the run of the mill. To facilitate this, one would need a discretionary element to any fixed costs system. However, with discretion come the inevitable arguments about what should or should not qualify for that discretion. Against this, if one adopts a system that avoids such arguments by allowing no escape from the fixed costs, then there is real potential for unfairness. The fixed costs regime for low value road traffic accidents has adopted the certainty over flexibility approach and, for claims of no more than £10,000, one can legitimately argue that swings and roundabouts will even out any perceived unfairness. However, if one includes all personal injury claims up to £25,000, there will be many more cases where the fixed costs may be perceived as unfair and this suggests that there may have to be a residual discretion within the system. One will therefore inevitably have a proportion of cases where the parties are arguing over whether the discretion should or should not be exercised. Under an earlier regime, before the implementation of the Civil Procedure Rules, costs were limited to £1,315 where damages were less than £3,000. However, there was a discretion to exceed this sum and parties were constantly embroiled in arguments about whether, and if so, by how much this sum should be exceeded. Will the new regime have a similar lacuna?

It is therefore clear that there is some way to go before one can confidently assume that the problem of legal costs can be filed under the heading of 'problem solved'. Insurers must continue to be vigilant in relation to legal costs for the foreseeable future and continually monitor and refine their strategy for dealing with legal costs. To adopt the attitude that it will all be sorted very soon and not worry, would be a major mistake. Insurers need to continue to keep a very close eye on legal costs.

(An extended version of this article will appear in a forthcoming Insurance Post supplement)

FAST TRACK TRIAL COSTS

The 45th Amendment to the Civil Procedure Rules, which came into force on the 1st October 2007, has increased the amount of Fast Track Trial Costs payable under CPR 46.2. The new amounts payable are set out below:

Value of the claim	Fast Track Trial Costs
No more than £3,000	£485
More than £3,000 but no more than £10,000	£690
More than £10,000	£1.035

In addition, the amount that may be payable to a solicitor for attendance with Counsel has been increased to £345.

Barn Dance in aid of the Princes Trust



3rd November 2007 saw the Legal Costs Negotiators Ltd Barn Dance in aid of the Princes Trust, in association with Halliwells LLP. It proved to be a fantastic success raising over £3000!

An in house team comprised of Katie Wagstaff, Sara Tinwell, Laura Bannon, Laura Callaghan and Lana Bradley decided a Barn Dance would be an excellent way to raise money as well as having some fun along the way.

Over 100 people attended, and danced the night away to the Ceilidh band, enjoyed a hog roast and even took part in the bucking bronco competition! The events of the evening included a raffle and auction, with prizes ranging from a signed Nigella Lawson cookbook, to an Aston Martin DB8 for the weekend, which was kindly supplied by Halycon Cars.

Many thanks to everyone involved, there are already bigger and better things being planned for next year so watch this space!

Court Fees for Detailed Assessment Increased

The Civil Proceedings Fees (Amendment)(No.2) Order 2007(SI 2007/2176) has increased the cost of a case going to detailed assessment. Previously, the fee was a flat £300 in the County Court and £600 in the High Court, but there is now a graded fee scale ranging from £300 where the costs are no more than £15,000 to £5,000 for cases with costs in excess of £500,000. In calculating the amount of costs, the order states that one should exclude VAT and disbursements, meaning that it is the profit costs figure that counts. However, this was quickly amended by the Civil Proceedings Fees (Amendment)(No.2) (Amendment) Order 2007(SI 2007/2801) which confirmed that it is the total amount of the Bill that should be used for calculating the appropriate fee.

CASE LAW UPDATE

RTA Predictable costs: Wetzel v KBC Fidea [2007] EWHC 90079 (Costs)

Where a Claimant has before the event legal expense insurance but chooses to instruct a solicitor under a Conditional Fee Agreement, they are still entitled to recover the success fee in accordance with CPR Part 45. Master O'Hare held that there was no requirement for the incurring of the success fee to have been reasonable and it is payable irrespective of other funding options that may have been available.

Success Fees: Barham v Barking, Havering and Redbridge NHS Trust (2007) (Unreported)

In a clinical negligence claim, a success fee was set at 100% at the inception of the claim. On assessment, this was reduced to 67% on the basis that the success fee was not staged in such a way that a lower success fee applied if the case settled without dispute and in those circumstances, it was more difficult to justify a flat 100% success fee to be applied from day one (following *KU v Liverpool City Council*).

Conditional Fee Agreements: Preece v Caerphilly County Borough Council (2007) (Unreported)

Where a solicitor entered into a Conditional Fee Agreement with the Claimant and it was not signed by the Claimant, this was a sufficiently serious breach of the Conditional Fee Agreement Regulations 2000 to render the agreement invalid and unenforceable with the result that no costs were payable.

Conduct: Collier v Arriva Yorkshire (2007) (Unreported)

The Claimant sought damages for injuries caused by a bus accident. The Defendant made a payment into court which the Claimant rejected and the case proceeded to trial. The Claimant failed to beat the Defendant's payment into court and it was clear that the claim had been exaggerated substantially. The Court ordered the Claimant, notwithstanding the fact that she was the successful party, to pay 90% of the Defendant's costs on the indemnity basis to reflect her conduct in the case.

VAT on medico-legal reports

Historically, medical reports obtained for the purposes of litigation have been exempt from VAT as they were considered to fall under the VAT exemption that applied to healthcare services (This is why reports from psychologists always attracted VAT whereas reports from psychiatrists did not). However, following the decision in the European Court of Justice case of *Dr Peter d'Ambrumenil*, from the 1st May 2007 this exemption no longer applies to medico-legal reports and they will attract VAT at the standard rate. Fees for access to medical records will remain VAT exempt.

One exception would be if the instruction of the medical expert comes, not from the Claimant Solicitor, but direct from the Defendant insurer. In these circumstances, the provision of the medical report would fall within the VAT exemption that applies to services rendered in the administration and performance of insurance contracts and no VAT would be payable.

LCN Free Seminars

In response to the very positive response LCN have received to our free legal costs seminars, we now offer a range of different courses dependent on your particular requirements. These include:

- **An Introduction to Legal Costs**
- **Conditional Fee Agreements – An Introduction**
- **Current Issues in Legal Costs**
- **Conditional Fee Agreements – Recent Developments**
- **Conduct – How to minimise your legal costs spend from claim inception to assessment**

Comments on previous seminars:

‘The clearest costs presentation I’ve heard with excellent supporting material.’

‘The presenter was very knowledgeable’

‘An excellent talk on an ever changing subject’

We are also happy to tailor a bespoke seminar to match your exact requirements. Please contact Paul Jones (paul.jones@lcnltd.co.uk) - 0161-742 4575) for further information.

Contact Information

Manchester Office

Armstrong House, 1 Houston Park, Salford Quays, Manchester M50 2RP
DX: 20339 Salford Broadway Tel: 0161-742 4555 Fax: 0161-742 4550

Contacts:

David Rodwell BEng. ACA Director
Direct Dial: 0161-742 4567 E-Mail: david.rodwell@lcnltd.co.uk

Paul Jones (Barrister) Technical Director
Direct Dial: 0161-742 4575 E-Mail: paul.jones@lcnltd.co.uk

London Office

56 Marsh Wall, London E14 9TP
DX: 42673 Isle of Dogs Tel: 0207-510 2345 Fax: 0207-515 5000

Contacts:

John Webb ACII Managing Director
Direct Dial: 08451 668647 E-Mail: john.webb@lcnltd.co.uk

Website

www.lcnltd.co.uk