



QBE EUROPEAN OPERATIONS

Risk Managers Forum - The Liability Claims Environment

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Agenda

- Civil process reform – Ministry of Justice (MOJ)
Consultation : 20th April 2007 – walk through
- Bonus items
- *NHS treatment charges*
- *Damages – MOJ consultation and Ogden tables*
- *Corporate manslaughter*



Civil Process Reform - “Case track limits and the claims process for personal injury claims”

Consultation published 20th April – CP8/07

<http://www.dca.gov.uk/consult/case-track-limits/cp0807.htm>

Why:

- Fall out from DWP process
- Political discontent at – delay, lack of transparency, complexity, cost of the system for injury claims handling
- Compensation culture response
- Lobbying – defendant groups
- Review commenced Spring 2006



MOJ Aims and Means

- Timely, proportionate and cost effective claims handling
 - Early notification
 - Promote early admissions of liability
 - Remove duplication of work
 - Remove front loading of costs
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- A claims form and standard documents
 - Simple procedure – limit scope for argument
 - Fixed recoverable costs
 - Control ATE inception
 - Consultation – series of questions



Basics

- Pre consultation phase – 2006 shaped ideas
- England and Wales application – not Scotland/N Ireland
- New track limits
- Accidents only?
 - No, but other injury types are functionally excluded by timescales for liability admissions
- Jig saw – missing pieces:
 - The costs/fee regime
 - The mechanics
 - Impact on cases outside scope



Track Limits

- Small track limit – remains £1,000 for injury cases
- Fast track – to £25,000
- Rationale:
 - The claims process will be quicker, cheaper, more certain
 - Costs are engineered out
 - Paying costs on low value cases is less relevant



Walk Through – Claim Initiation and Response

- Frontloading

- Client / solicitor contact – complete *claim form*
- Letter with “claim form” – *RTA / everything else model*
 - Solicitor – parked, no work, no costs building
- Send to “defendant” within 5 working days (WD)
- Rehab to be explored?
- Defendant:
 - Send on to insurer
 - Respond to solicitor providing insurer’s details and date of report to insurer (time period starts?)
- Stick - defendant has, *15 WD Motor / 30 WD all other claims types*, to respond with a full admission of liability
 - If cannot comply : go back with reasons?



Walk Through – Liability Options

- Options:
 - Liability rejected and denial accepted - no costs
 - Liability accepted in full in time – cost contained process
 - Answer delayed : fall out in to the standard procedure
 - Liability denied in whole or part (to include contributory negligence allegation) – standard procedure
 - Admissions binding save for fraud



Walk Through – Medicals and Negotiation

- Solicitors – commission medical report
- Right sizing the expert – qualified GP? fees fixed
- Report template used – new MOJ format - claimant signs off
- Solicitors send report in *settlement pack* – with offer
- Stick – defendant has 10 WD to accept or counter
- Stick - thereafter 20 WD to negotiate settlement
- Stick – failure to agree – refer to a District Judge
- £2500 +/- process : paper review only for under £2,500 cases



Walk Through – Damages Feature

“Special damages” - not dispute values up to£ x

By injury / loss type examples:

- Medication or prescriptions
- Transport – mileage/petrol
- Clothes
- Short term care needs – hourly rates
- Engineered in to the medical report and settlement pack



Damages Assessment – Expert Systems?

- For debate
- Claimant lobby: victim is unique so their needs must be subject to bespoke handling
- Defendants: tariffs for consistency and simplicity
- Options:
 - JSB guidelines upgrade with intervals or medical tariffs
 - Expert system – Colossus/COA
 - MOJ jury is out



Outcomes and Sanctions - Non Compliance

Claimant solicitors – hmm. Short on sanctions. We will help...

Defendants/insurers

- Fall out of the system – into re rated standard process
- Solicitors escape fixed and/or predictable fees/costs
- Solicitors can incept ATE insurance and recover premium
- Adverse costs penalties – indemnity costs?
- Expense – high cost regime



Compliance Outcomes

- Fixed and or predictable costs parcels – but how much?
 - At stage one – investigation/admission
 - At stage two – quantification/negotiation
 - At stage three – dispute resolution / subject to claims value
- No or limited ATE insurance premiums
- Simplified process / greater certainty
- Claims resolve earlier



ATE Insurance – As a Microcosm

Not recoverable in the cost contained process

Sub exception for £2,500 plus cases with quantum determined by a District Judge

Recoverable outside the scheme but:

- More onerous terms
- Higher premiums



Issues and Management – Reporting

- Timescales – compliance testers
- Incident capture – the claim as an archive search
- Efficient transactional reporting:
 - Reporting incidents and investigation
 - Central archive - findability
 - Getting the report to QBE
 - Facilitating the decision



Issues and Management – Liability Decisions

- Making the decision – in time
- Frontloading the investigation
- QBE interaction – getting your buy in
- Communication
- Decisions on incomplete information – costing up the perfectionist process
- QBE tightening investigation timescales



Risk - Liability Creep

Cost benefit analysis / low value claims:

- Contributory negligence – worth taking the point?
- Low value all or nothing cases
- Less detailed information
- Manage the impact on claims culture / frequency
- Fraud
- QBE continuing role for invasive on site investigation



Risk - Damages Creep

- Special damages items
- Care engineered in to the process – medicals
- District Judges as final arbiters – expensive
- Tariff raising
- Costs consequences of dispute – not economic
- Change in solicitors behaviour
- QBE accent on early response – dialogue led negotiation



Implementation

- Consultation period closes - 13th July 2007
- Consultation feedback from MOJ – September 2007
- Civil procedure rules committee – meet October 2007
- Go live – Q1 2008 but...
 - Legal costs and fees structure – on the drawing board
 - A new government / a new approach?



Action

- . QBE Information - Issues Forum and customer briefings
- Consultation response : by 13th July 2007 but shaped
 - QBE / ABI response – CBI/EEF
 - Consider own response – reporting and timescales?
- Process review
 - Accident investigation - upgrade
 - More effective use of reports and documents
 - Pre claim triage? – anticipate liability outcomes
 - Managing the new claim
- Manage the risks



Analysis

Stretching but optimistic...

- Inspectors and handlers – are decision makers
- Win legal costs savings – if sufficiently attractive
- Can upgrade reporting – achievable
- Time to review processes before “go live”
- Early accurate triage in to “pay v contest” camps
- A lot to do...



Bonus Items



NHS Treatment Charges

Live from 29th January 2007 (injury on or after)

Three tiers of charge:

- Ambulance - £159 per journey
- In patient - £620 per day
- Out patient - £505 one off

Contributory negligence discounting



MOJ Damages Consultation

Consultation paper issued 4th May 2007 - England and Wales

<http://www.dca.gov.uk/consult/damages/cp0907.htm>

Consolidation – loose ends not general damages

- Bereavement awards/wrongful death - revisions
- Private treatment costs – offsettable/revisited
- Accommodation – purchase, how to treat
- Collateral benefits – PA policy proceeds / pension loss
- Future care – local authority funding responsibilities
- Impact overall – higher value and catastrophic losses



Ogden Tables – 6th Edition

Published 3rd May 2007

- Future loss calculations
- Moderate increase in multipliers
- New ways to calculate “contingencies other than mortality” – to better fit the individual
- Increase in damages – high value cases



Corporate Manslaughter - Update

- Bill back in the Commons – 16th May
- Must pass in to law by 17th July or fail
- House of Lords amendments – deaths in prison and police custody, psychiatric hospitals
- Home Office opposition
- Compromise sought but...





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