



QBE EUROPEAN OPERATIONS

Risk Manager's Forum - The Liability and Claims Environment – Issues for Business

Mike Noonan

Agenda

England and Wales - Claims Process Reform

Ministry of Justice (MoJ) ...

Collective actions and litigation funding

Fatal Accidents and Liabilities : Risks and Mitigation

Corporate Manslaughter and more

Bulletin Board

Liability specifics – case law and regulation

Claims inflation - tariff increases and future loss

Scotland and Northern Ireland – what's new?

Horizon scanning





England and Wales

Claims process review



Claims Process Reform - MoJ

Ministry of Justice (MoJ) consultation CP8/07

Aims

Timely, proportionate and cost effective claims handling

Early notification and resolution

Promote early admissions of liability

Remove duplication of work and front loading of costs

Facilitate rehabilitation

Pick the low hanging fruit...



Accident Claim - Initiation and Response

Letter with Claim form – RTA / everything else model

Send to defendant within 5 working days (WD)

Solicitor parked, no work, no costs building

Defendant send on to insurer / adjuster and

Respond to solicitor providing insurer's details and date of report to insurer:

15 WD Motor / 30 WD all other claims types, insurer / adjuster to respond with a full admission of liability



Compliance

Fixed and or predictable costs parcels – but how much?

Stage one – investigation/admission

Stage two – quantification/negotiation

Stage three – dispute resolution / subject to value

No ATE insurance premiums

Simplified / claims resolve earlier

Savings?



Non Compliance

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

Expensive?



Your Business Issues - Reporting

Reporting timescales – compliance testers:

Reporting incidents and investigation

Central archive - findability

Getting the report to insurers / decision makers

Facilitating the decision

Acting quickly



Joint Business Issue – Liability Decisions

Making the decision – in time

Frontloading the investigation

QBE interaction – getting your buy in:

Generic

Case specific

Making decisions on incomplete information



Business Issues - Liability and Damages Creep

Cost benefit analysis – is it worth taking the point?

Contributory negligence

Low value all or nothing cases

Damages items

District Judges as final arbiters – tariff raising

“No” – if nothing spoiling

“Yes” – to vary tactics



Implementation?

Consultation response awaited

Feedback from MoJ promised – September 2007 (!)

Again promised by end of April (that's 2008)

Advisory Committee on Civil Costs

Chaired by Prof. Stephen Nickell - parked

Go live – 2009?

Conjecture - what will it look like?



Commercial Funding

Torts of Champerty and Maintenance? but...

Arkin v Bouchard Lines (2005) CA

New commercial reality - <http://www.allianz-profi.com/>

Money claims in excess of £100,000 value

Good prospects of success

Enforceable awards

Take percentage of damages in return for carrying the risk

EL/PL : second string to CFA/ATE ... at present!



Collective Actions

Class Actions v Group Litigation Orders

Civil Justice Council exploration

Options and implications

Prediction

Proceed with an opt in model

Simplified machinery / costs transparency

More widespread use

EL innovation / template losses



Fatal Accidents



Fatal Accidents – HSE Statistics

At : <http://www.hse.gov.uk/statistics/overall/fat10607.pdf>

2006/7 – 241 workers fatally injured

2006/7 – 90 members of the public (ex rail/road related)

By comparison – 2005/6 - 217 workers / plateau last five years

Manufacturing – 35 worker deaths

Service sector – 85 worker deaths

Agriculture and construction = 46% of total (34/77)



Fatal Accidents – HSE Statistics

Key causal factors:

Falls from height

Falling objects

Struck by vehicles



Corporate Manslaughter

Recap - the offence (from 6th April 2008)

Fatalities - board level issues

Characteristics:

a) heavyweight defence experience

b) health and safety know how

c) knowledge of your business

QBE panel solicitors, vetted/approved

Policy cover by agreement : £1m sub limit for clarity

Activate plan if the worst happens



Corporate Manslaughter

Immediate response – package of measures

Appropriate co-operation

Publicity planning

Initiate the civil claim – interim payments?

Liability admissions or civil claim settlement

No negative impact, mitigation upside

Risk – don't forget company car drivers



Sanctions and Sentencing – A Warning

Consultation closed – February 2008

Fines:

Turnover benchmark : 5% of average annualised figure for the business entity

Mitigation or aggravation : 2.5% - 10%

Remedial orders and publicity orders

Costs

Finalised regime awaited



Fatal Accident Damages

Bereavement Award

April 2002 to 31 December 2007 - £10,000

1 January 2008 onwards - £11,800

Cookson v Knowles:

interest calculation

Scotland :

damages consultation – output awaited

England/Wales :

Law Commission – action awaited

Time has come for change?



Bulletin Board



News - Liability Specifics

Court of Appeal Cases

A v Hoare – Limitation for intentional harm – now “floating”

Corr v IBC – suicide following serious injury – allowed

Allison v London Underground – PUWER R9 – Training?

Smith v Nottinghamshire – PUWER R 5 – Who’s equipment?



News - Liability Specifics

Regulation

The Sex Discrimination Act 1975 (Amendment)
Regulations 2008

The Control of Noise at Work Regs (2005) –
Leisure industry – effective 6th April 2008



Future Loss - Periodical Payments

Thompstone v Glossop and Tameside Acute Services NHS Trust

Indexation of periodical payments –
which index RPI v ASHE 6115?

Court of Appeal / Appeal to House of Lords

Which index? / redistributive justice (economics)?

Encourage PP route, more claims

Increase claims values

Increase overall spend

Example : QBE claims book review - £13m difference



Scotland / N Ireland – Procedural Law Reform

N Ireland law reform:

New pre action protocol effective 1st April 2008

Based on England and Wales model

Scots law reform:

Lord Gill – Civil Courts reform

Courts and administration

Potentially protocols and streamlining

Procedural independence –
plaques exemptions summer 2008



Horizon Scanning



Horizon Scanning – 2008 Inflation Drivers

1 Tariffs – NHS / Bereavement / Costs

2 Ogden 6th Edition : partial future loss

3 Republic of Ireland –
(Personal Injury Assessment Board - PIAB)

Legal system building up resistance / awards being beaten

Exceptions being created

4 Asbestos related Pleural Plaques – Scotland / England?

5 Pension age reform

6 Working Time Directive



NHS Charges – from April 2008

Annual tariff Increase – 8.3%

| | Pre 1 st April | Post 1st April |
|----------------|---------------------------|----------------|
| Out Patient | £505 | £547 |
| In Patient | £620 | £672 |
| Ambulance | £159 | £165 |
| Maximum | £37,100 | £40,179 |



Horizon Scanning – 2009 / 10 / 11

1 MoJ civil process – frequency / values

2 Periodic payments – high value cases

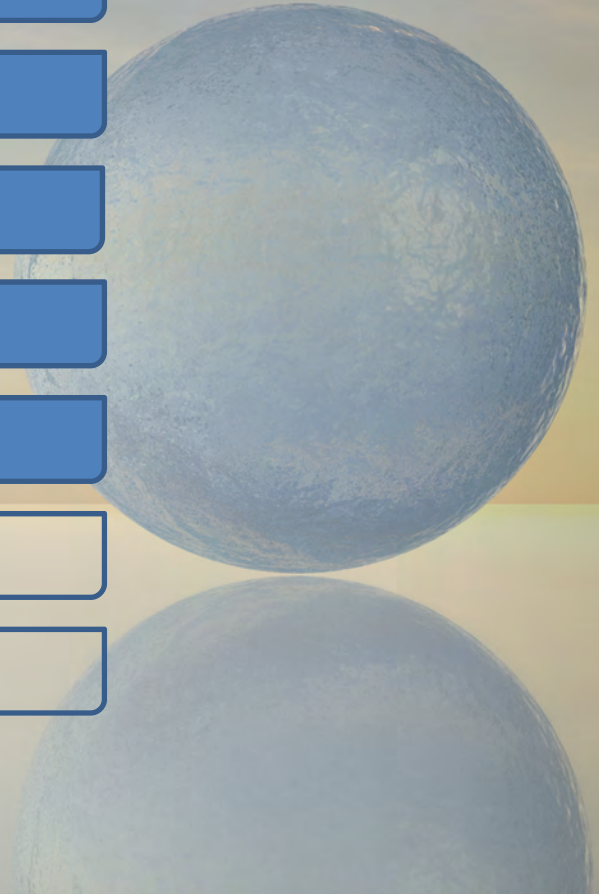
3 MoJ Damages Consultation – all / contingent

4 Scotland – civil procedure change

5 Legal Services Act – New legal models – 2011

Claims frequency

Systems effectiveness



Horizon Scanning - Generic

1 Dilution of “burden of proof” on claimant: “but for / material contribution” watered down to – “increased risk of”

2 Duty escalations – e.g. third party assaults, posture, food

3 Shift work – ill health risks

4 Nanotechnology – ill health risks

5 Vibration and noise – old wine / new bottles



Agenda

England and Wales - Claims Process Reform

Ministry of Justice (MoJ) ...

Collective actions and litigation funding

Fatal Accidents and Liabilities : Risks and Mitigation

Corporate Manslaughter and more

Bulletin Board

Liability specifics – case law and regulation

Claims inflation - tariff increases and future loss

Scotland and Northern Ireland – what's new?

Horizon scanning





Time for Questions?

