



QBE

Risk managers forum
The liability claims
environment

Mike Noonan



Agenda

Claims Process Reform 2008

Ministry of Justice (MOJ) – Business implications and update

Bulletin board

Liability specifics – Ellis v Bristol city council

Occupational health claims - news and trends

Damages developments

Corporate manslaughter – insurer interface

Legal services act 2007



Claims process reform

Ministry of Justice (MoJ) consultation CP8/07

– closed 13th July

Aims

Timely, proportionate and cost effective claims handling

Early notification

Promote early admissions of liability

Remove duplication of work and front loading of costs

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 and

- Respond to solicitor providing insurer's details and date of report to insurer
- 15 WD Motor / 30 WD all other claims types, to respond with a full admission of liability

If cannot comply : go back with reasons?



Liability options

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



Medicals and negotiation

Solicitors – commission medical report

Right sizing the expert – qualified GP / fees fixed

Report **template** – new MOJ format

Solicitors send report in settlement pack – with offer

Defendant has 10 WD to accept or counter

Thereafter 20 WD to negotiate settlement

Failure to agree – refer to a **District Judge**



Damages feature

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

- Medication or prescriptions
- Transport – mileage/petrol
- Clothes
- Short term care needs – hourly rates

Engineered in to the medical report and settlement pack

Risk – ceiling becomes the norm...



Damages assessment

Expert systems

JSB guidelines upgrade with intervals or medical tariffs

Expert system – Colossus/COA

Civil Justice Council – work commissioned

Future software based model

- No medicals but forms?
- Valuation triggers
- Benchmark comparison – generates the number



Compliance

Fixed and or predictable costs parcels – but how much?

- Stage one – investigation/admission
- Stage two – quantification/negotiation
- Stage three – dispute resolution / subject to claims value

No ATE insurance premiums

Simplified process / greater certainty

Claims resolve earlier



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



Business issues

Reporting

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 insurers
- Facilitating the decision



Business issues

Liability decisions

Making the decision – in time

Frontloading the investigation

QBE interaction – getting your buy in

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
- Special damages items
- District judges as final arbiters – tariff raising
- Change in solicitors behaviour
- QBE role - site investigation and dialogue led negotiation



Implementation

Ministerial announcement – September

– Advisory Committee on Civil Costs –
chaired by Professor Stephen Nickell

Consultation feedback from MOJ – October 2007 (?)

MoJ seminars early 2008 – on mechanics

Rules committee – Q1 2008

Go live – Q3? 2008



QBE action

QBE / Client - consultation response

Communication / information

QBE claims process review

QBE tightening response timescales now

Explore when MoJ recommendations available



Bulletin board



Liability

Workplace (health, safety and welfare) regulations 1992 – R12

Ellis v Bristol city council – court of appeal July 2007

Slipping hazard / history of hazards – transient risks

Compliant cleaning regime

Regular flooring – colour masking hazard

HSC ACOP – floor to be considered in
context of day to day use

Liability for breach regs 12(1) an 12(2)

Strict liability subject to contributory negligence?



Occupational ill health issues

Deafness

Increased claims intake

1990s / 2000s exposures

Ongoing exposure

- industrial scenarios not exotics (leisure/nightclubs)

Protection regime defects – PPE, training, enforcement

Evidential gaps – widening over time



Occupational ill health issues

Asbestos

House of Lords – asbestos induced pleural plaques decision –
17th October 2007

Johnston v NEI and others

- Symptomless bodily changes = 0
- Risk of a disease = 0
- Anxiety about the risk = 0

Compensation : 0 + 0 + 0 = 0

The claims fail

Scotland – parliamentary debate, a bill?



Occupational ill health issues

Stress

Majrowski v Guy's and St Thomas's NHS Trust 2006

Protection from Harassment Act 1997

Vicarious liability – multiple transactions

Conn v Sunderland City Council CA 7/11/07

Need for harassment to be “criminal”

Waters down Majrowski effect



Damages

4th UK bodily injury awards study - October highlights

1996 to 2006 – annual injury claims value inflation 9.6%

Costs as a proportion – average 30%

National numbers of claims rising?

2001/2 – 338,000

2006/7 – 518,817

Injuries and fatalities fell by 20% in the period

Mid value range cases settling more “quickly”

6.1 years in 1996

4.2 years in 2006



Damages

Periodical payments

Thompstone v Glossop and
Tameside acute services NHS trust

Indexation of future periodical payments

Court of Appeal – 14th November

Opinion – Q1 2008

Clarify approach:

- Encourage PP route, more claims
- Increase claims values
- Increase overall spend



Damages

Ogden tables 6th edition update

Future loss calculations

Moderate increase in multipliers

New ways to calculate “contingencies other than mortality”

- to better fit the individual based on employment, education, health history and prospects

Adverse impact on Employers cases

Increase in damages

- partial loss of earnings cases and higher value claims

Ogden 7th edition underway – increases in multipliers



The law on damages

MoJ consultation

Closed 27th July – England and Wales

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

increase values in serious injury cases



Scotland

Damages for wrongful death

Law Commission of Scotland

- discussion paper 135
“Damages for wrongful death” August 2007

Dependency

Lost years claims – inflationary

Alternative dependency claims

Loss of society tariffs



Corporate manslaughter

Insurer / insured interface

Fatalities - board level issues

Disaster planning - agree legal representation in advance

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

Activate plan if the worst happens



Corporate manslaughter

Insurer/insured interface

Immediate response – package of measures

Initiate the civil claim – interim payments?

Liability admissions or civil claim settlement

- no negative impact, mitigation upside

Risk – don't forget company car drivers



Legal services act 2007

Royal assent 30th October

Legal profession - alternative business structures

“Tesco Law”

- External capital / owners
- Blue chip or claims management companies
- Firms – non legal directors or partners
- Partners other lawyers / non lawyers

Efficiencies and increased customer capture

Increased accident to claim conversion



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Time for questions





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