



Compensation fast and fair

A fast and efficient compensation system for personal injury cases which is above all else fair

Foreword

There is widespread agreement that improvements are needed in the current procedures for claims for compensation for personal injury. Some people have suggested that costs should be reduced by depriving injured people of the right to recover their legal costs. The Government is expected to issue a consultation paper canvassing possible changes later this year.

The Law Society has over many years worked with other stakeholders in the civil justice system to improve the claims process. Our aim is to ensure that those injured as a result of someone else's negligence get full and fair compensation as quickly as possible; and that support for their rehabilitation is provided promptly. In recent years, the Law Society helped develop "no win no fee" arrangements, so that injured people no longer have to let their rights go by default for fear of financial disaster if their claim fails. We have also played a major part in the development of systems of fixed costs for lower value cases.

This discussion document contains our suggestions for further improvements to streamline the claims process for lower value claims. We believe adoption of our proposals would make the process quicker and cheaper, without denying people help from a solicitor at the time they most need it. Implementing our proposals would thus ensure that reform of the system provides a better deal for consumers.

Fiona Woolf
President of the Law Society of England and Wales.



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“Thanks for all your help with my claim. If I had to represent myself, I am sure that insurance companies could make a totally unrealistic offer. However, your expertise ensures that any offer is appropriate for any injuries sustained. Because of your input I feel that the amount paid to me is fair. How would I know without your knowledge of these types of things?!”

David from Cambridgeshire to his solicitor

Injured people should continue to have access to legal advice in lower value personal injury claims

The purpose of the small claims procedure is to provide a simplified version of the standard court process for small claims. When the procedure was introduced no provision was made for a successful claimant to recover their legal costs because it was intended that people would represent themselves.

The procedure has evolved over the years to the current financial limit of £5,000. The small claims procedure is only used for personal injury claims for claims of less than £1,000.

The limit was set at £1,000 for personal injury claims in order to protect the injured person's interests because the complexity of these claims makes them unsuitable for the small claims track. Because legal costs cannot be recovered when you win, lawyers costs have to come out of any compensation received. This pressurises claimants either to forgo part of their compensation or to pursue the claim without legal representation.

“This being my first experience of having a car being written off with attendant personal injury, and absolutely not my fault, I would not know where to start. Without recourse to your assistance I think that I would have finished up ‘sore’ on several counts”

Andrew from Bristol to his solicitor

Claimants need representation in personal injury claims because

- Personal injury is a difficult and complex area of law of which consumers have no knowledge. If a consumer buys faulty goods then he knows who is at fault. With a personal injury claim the claimant has to prove:
 - that the accident happened at all
 - seek witness evidence
 - apply for disclosure of documents
 - refer to contemporaneous medical records
 - identify the correct defendant (which may be one of a number of companies in some cases)
 - show a duty of care is owed to him/her
 - prove there has been negligence
 - show his/her injuries are a direct result of the accident
 - value his/her claim
- Even relatively small personal injury claims involve complex issues of liability and causation and, in some cases, complex medical evidence
- The defendant is almost always an insurer with access to expert legal advice
- Damages for injury in the UK are low. A personal injury claim worth between £1,000 - £2,500 can involve serious injuries (such as broken bones, noticeable scarring, loss of part of a finger)

An increase to the small claims limit will deny injured people redress

The Government has been reviewing whether to increase the small claims limit for personal injury claims. The Department for Constitutional Affairs Select Committee recommended an increase to £2,500 in December 2005.

District Judges are very helpful to unrepresented people that appear before them in small claims but, without representation, most injured persons will not get as far as seeing a District Judge, they will simply drop their claim. By implementing such an increase the Government will, in effect, be saying that it doesn't matter whether or not people with injuries worth less than £2,500 get compensation. Claims worth less than £2,500 can involve quite serious injuries such as broken bones or permanent scarring and currently make up about two thirds of the total number of personal injury claims (and 80% in road traffic cases).

Some say that inflation is an argument for an increase, but that would require a rise of less than £500. It would also fail to take



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account of a change in 1999 when the limit was confined to damages for injury only (excluding financial and other losses) which represents a significant increase to the limit.

In evidence to the DCA Select Committee on small claims in December 2005, the following concerns were recorded about the experiences of unrepresented people using the small claims track:

“The small claims forms are too complicated for ordinary individuals with no legal knowledge.”

Citizens Advice Bureau

“Lay people would be disadvantaged if they had to arrange for investigation of medical aspects of their claim, in all but the smallest cases, without the assistance of legal representation.”

The Association of District Judges

For these reasons the Law Society believes that there should be no increase to the small claims limit for personal injury cases unless the current small claims rules are amended to provide for recovery of fixed legal costs for personal injury claims above £1,000.

“I would like to say a big thank you for all the help and advice given during my claim. If it was not for all your help I would not have pursued the claim or have known where to begin, so once again thank you for all your hard work.”

Deborah from Derbyshire to her solicitor

The need to streamline small personal injury claims

The current system is effectively delivering fair compensation for consumers. It enables consumers to have representation and to recover their legal costs but for lower value claims it often takes too long and involves costs which can be disproportionate to the amount at stake. Costs appear disproportionate in lower value claims because in order to properly process a claim under the

current system a substantial amount of work is required regardless of whether the claim is worth £2,000 or £10,000. The solution is to streamline the system not deny to the consumer independent representation.

Streamlining would bring two key benefits:

- speed, both in securing redress and in facilitating rehabilitation
- reduced cost

The Law Society believes that there is another overriding factor which must be embodied in any scheme and that is

Fairness for the consumer, enabling those with valid claims to obtain independent advice and redress.

Fairness for consumers

Any new scheme should contain effective safeguards to protect the consumer. It is important not to sacrifice appropriate consumer protection in order to streamline the current process.

The Law Society believes speed, value for money and fairness can all be achieved in

a new system but such a system must be built on the following principles:

1. The injured person's interests cannot be represented by the insurer for the wrongdoer – there is an inherent conflict of interest. Insurers have a legal duty to enhance profits on behalf of shareholders.
2. The injured person should have access to independent legal advice throughout the process.
3. The system should be designed so as to avoid duplication of work.
4. The system should be less complex.
5. The system should incentivise efficient handling by solicitors by providing fixed recoverable costs, for claims settled without proceedings (which is currently working well for road traffic cases).
6. The system should incentivise efficient handling by insurers by providing financial penalties for failure to respond within agreed timelimits

“Kind regards for the deeply appreciated help in my road traffic accident. Many people would suffer greatly without the help of people like you.”

Roy from Norwich to his solicitor



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Why do consumers need the help of a solicitor?

The current system involves two sets of professionals undertaking an investigation of the claim. The claimant solicitor investigates on behalf of the injured person and the insurer investigates on behalf of the wrongdoer (or defendant), often before there has been a great deal of contact between the two sides. This is unnecessary duplication of work which increases costs.

The sensible and practical approach is for this work to be undertaken by the claimant's solicitor who can assemble the necessary evidence, including medical evidence to assess the insurer's offer to settle the claim. This cannot properly be dealt with by the insurer for the alleged wrongdoer because there is an inherent conflict for them in dealing with the injured person, who needs independent advice.

Solicitors are ideally placed to undertake the investigation because:

- Their duty is only to the injured person
- They are highly trained
- They are subject to robust regulation
- They have established and efficient systems in place to deal with the investigation

Consumers themselves say they would prefer to have the help of lawyers for lower value personal injury claims.

- A MORI survey conducted by APIL (Association for Personal Injury Lawyers) found that two thirds of people who suffer an injury through someone else's negligence would not pursue it through the small claims court without an independent solicitor helping them.
- Research conducted by UNISON in March 2005 with 1000 trade union members about their recent claims showed that:
 - 63% of those members would not have proceeded with their case or felt confident about going before a judge without legal representation and
 - 66% believed their cases would not have been dealt with fairly without the help of a lawyer.
- In Ireland where the Government has established the Personal Injury Assessment Board which is designed to be a simple administrative procedure for personal injury claims, 90% of claimants prefer to use solicitors to help them make an application.

A new streamlined track for all PI claims under £10,000 A simple process

Scope

The system is designed for all personal injury cases up to £10,000, for injuries incurred in England & Wales.

Early Notification

As soon as an injured person visits a solicitor, the solicitor would complete a standard early notification form providing necessary information to enable the insurance company to consider the claim and send it to the insurer (if known) within 7 days of receiving instructions.

The solicitor would wait 21 days before doing further work on the claim to enable the insurer to offer an apology (if appropriate), admit liability and make an early offer of compensation. In that period no further work would be done by the solicitor, unless essential to protect the claimant's interests (for example if a key witness is emigrating).

Rehabilitation

Early notification would enable

- the solicitor to flag up any potential rehabilitation needs at the earliest stage and
- the insurer to consider providing rehabilitation services.

The early notification form would ask the solicitor to identify those claimants who may potentially benefit from rehabilitation. Those identified may be directed to a health professional who would be able to assess their suitability in more detail.

A simple claim form

After 21 days the solicitor would complete a standard claim form containing all details relevant to the claim.

There would be two standard forms of claim

- one for the simplest claims requiring only one medical report
- a second more complex form for claims requiring more than one medical report.

A fast process

On completion of the claim form, the solicitor would gather evidence needed to support the claim:

- a medical report from an agreed panel of medical experts
- a police report if necessary
- statements from witnesses



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There may be cases where a medical expert advises that some delay is necessary before a prognosis can be made. If delay is necessary, the insurer should make interim payments to the injured person for out of pocket expenses to avoid financial hardship.

Early offers to settle

Once the evidence has been obtained the solicitor would send a compensation package to the insurer containing:

- the standard claim form
- the medical report
- other evidence if appropriate
- a Part 36 offer of settlement (unless there is a very good reason not to).

A Part 36 Offer is a formal offer to settle which, in certain circumstances, will result in sanctions if the offer is not accepted.

Early settlement

On receipt of a completed compensation package, the insurer should accept the offer or make a counter Part 36 Offer within an agreed time limit.

Sanctions for failing to beat a Part 36 Offer

Sanctions for failing to beat a Part 36 Offer would be reinforced.

If the claimant fails to beat the defendant's Part 36 Offer they would be penalised by having to pay the defendant's costs from the date of the offer.

If the defendant fails to beat the claimant's Part 36 Offer they will be penalised by paying additional damages plus interest and indemnity costs.

Easy to Implement

This system could be easily implemented by introducing a new section of the Personal Injury Protocol for lower value claims. The Personal Injury Protocol works well and has introduced a new culture of claims handling. Enforcement of the protocol needs to be reinforced to ensure that failure to comply will result in the courts applying costs sanctions against the party which has breached the protocol.

"Thank you for all your efforts towards my claim. Without your representation I believe my attempts to claim would have been uninformed and harrowing."

Derrin from Weymouth to his solicitor

All comments are from clients who have recently responded to a survey carried out by the Motor Accident Solicitors Society (MASS) regarding the use of a solicitor for personal injury claims. MASS have currently received over 23,000 responses supporting the importance of legal representation throughout the process when claiming compensation