



Track Limits and Personal Injury Claims Process Department Of Constitutional Affairs Consultation

With effect from 20 April 2007, the Department of Constitutional Affairs has entered into a period of consultation on case track limits and the claims process for personal injury claims. Such consultation will end on 13 July 2007.

A copy of the DCA paper is available at: <http://www.dca.gov.uk/consult/case-track-limits/cp0807.htm>

We set out below a précis of the consultation document and DCA proposals.

Case Track Limits - The Small Claims Track

The issue under consideration by the DCA is whether the current small claims limit of £1,000 for personal injury claims remains appropriate, given that it was last reviewed in 1999. If the consultation concludes that the limit should be raised then the issue will be to decide what the new limit should be.

The DCA have set out the following arguments for and against an increase.

Arguments for an increase

- Insurers cite disproportionately high costs as an indication that the current fast track system is not working well. They view the proper forum for dealing with low value claims as the small claims track
- An increase would lead to smaller sums being paid out by Insurers which would in turn lead to reduced premiums
- Cases which were historically excluded from the small track (e.g. whiplash) could now safely be included
- Insurers contend that the assumption that personal injury cases are more complicated than other claims should be tested
- Existing support mechanisms mean that unrepresented claimants should not be disadvantaged
- District Judges have the power to intervene to ensure that unrepresented claimants are not disadvantaged and that there is a 'level playing field'



Arguments against an increase

- Personal injury claims are complex and require independent legal guidance - the cost of which would be prohibitive if the limit were increased
- An unrepresented claimant would be faced with represented Insurers leading to an "inequality of arms"
- The vulnerable in society (i.e. those poorly educated or with a poor grasp of English) would be denied access to justice
- Many trade union backed cases would fall into the new limit depriving union members of legal representation
- Industrial disease cases may be brought into the small claims track. And unrepresented claimants would find it difficult to pursue such claims
- Claimants may be confused or misled by Insurers' negotiation tactics
- The argument that District Judges could intervene on behalf of a claimant is misleading
- Neither the advice sector nor the courts could cope with an increase in the number of claimants in person
- Damages in low value cases have not materially increased over the last 10 years
- The new limit would have a destabilising effect upon both solicitors and the ATE market

The Options and Matters for Consideration

Option 1 - raise the limit to £5,000

- A considerable increase from the current limit potentially affecting hundreds of thousands of cases
- There is insufficient capacity within advice centres to cope with the influx of unrepresented claimants
- The majority of cases will not reach court and so District Judges will not be able to intervene
- Inappropriate types of cases will fall into the increased limit
- The majority of claimants will be disadvantaged because they will not be able to afford legal representation

Option 2 - raise the limit to £2,500

- Again, an increase in the limit would capture many injuries which have never before fallen into the small claims track



- An analysis of damages awarded shows no significant increase since the track limit was last considered in 1999

Option 3 - raise the limit in line with inflation

- Taking 1999 as a starting point an increase in line with inflation would raise the limit to £1,200
- This option may lead to claims inflation as claimants seek to value their claims sufficiently to take them into the fast track

Option 4 - No change

Conclusion

The conclusion reached by the DCA is that an increase in the limit would lead to the inclusion of certain injuries for the first time, concern about the availability of advice for claimants and an “inequality of arms”. They therefore recommend no increase in the current small claims track limit.

Case Track Limits - The Fast Track

To remind ourselves, this is the track utilised for cases where the value exceeds the small claims limit provided that the value of the case does not exceed £15,000 and the trial is likely to last no more than one day.

The recommendation of the DCA is that whilst the majority of cases will be unaffected by a change in limit (as they are below £5,000 in value) the financial threshold of cases falling into the fast track cases should be increased to £25,000 as this will allow a greater level of flexibility.

Improving the Claims Process for Personal Injury Claims

The Issue

The DCA recognise that "the processes and costs involved in making a claim for personal injury are perceived as being disproportionately high, particularly on the lower value cases".

They offer the view that costs can often exceed compensation and that the pre action protocols have had the effect of frontloading and driving up costs. The current systems encourage claimant’s solicitors to undertake a considerable amount of investigation work



before defendants are even notified of the claim which can lead to a great deal of unnecessary or duplicated work (and costs).

When increased costs due to success fees, ATE premiums and referral fees are factored in, the Government is now taking the view that these issues must be addressed and that a system must be put in place to provide fair compensation for the claimant in a more efficient and cost effective way.

The Key Areas

These are identified as:

- The provision of early notification of a claim to defendants/Insurers
- Promotion of early admissions of liability and settlements
- Removing duplication of work from the process

Claims to be covered by the new process

The consultation document states "It is proposed that these new processes will apply to all personal injury cases with a value of less than that of the fast track limit".

The New Process

Making a Claim

- A claim form will be sent to the Defendant/Insurer as soon as the claimant/Solicitor has the minimum information that the Defendant/Insurer needs to reach a decision on liability
- This form will be issued before the Solicitor carries out investigation work
- The accompanying letter will request the name and contact details of Insurers and the date that the claim form was sent
- The Defendant /Insurer will have a set period of time to investigate during which no further work will be undertaken by the Solicitor unless there are exceptional circumstances
- Following investigation the Defendant/Insurer will respond on liability stating whether it is admitted or denied
- If they are unable to do so within prescribed timescales they should write with an explanation
- Rehabilitation may also be considered at this stage



Admissions of Liability

- Except where fraud is discovered an admission of liability will be binding
- Upon receiving an admission of liability the claimants' solicitors will obtain medical evidence
- Once the medical report is approved by the claimant as being factually correct it will be sent to the Defendant/Insurer within a set time period as part of a settlement pack to include:
 - Medical Report
 - Form outlining special damages
 - Other relevant documents
 - Offer to settle
- The Defendant /Insurer will be required to accept the offer or make a counter offer within a set time scale. Additional time will be allowed for further negotiation

Repudiations of Liability

- Where no admission is made or liability is denied the claimants' Solicitor will be entitled to proceed with further investigation of the claim
- Defendants/Insurers can narrow the issues in dispute to prevent Solicitors making unnecessary investigations

Claimant in person

- Where an offer is made to a claimant in person he/she must be informed of the set timescales in which they can accept or reject an offer and that if the offer is accepted there can be no further claim. They should also be informed of their right to seek legal advice

Where negotiations break down

- For cases valued under £2,500 and where liability is admitted but quantum cannot be agreed, it is proposed that there will be a simple procedure to refer the cases to court for the issue of quantum to be resolved
- Where the case value exceeds £2,500 the application and papers will be filed in court and if no further evidence is required the case will proceed to hearing



- The £2,500 threshold will determine how the recovery of costs is dealt with, the need for ATE and the expectation that no further evidence will be required on cases falling below the limit.

Special Damages

- It is proposed that "certain" special damages are standardised and upper limits set which would not be challenged by Defendants/Insurers
- Regional hourly rates are proposed ("in some circumstances") for items such as care and help for the claimant in the home

General Damages

- It is suggested that a tariff or assessment tool should be adopted to assist in the calculation of general damages to increase transparency and reduce delay and cost
- The nature of the tariff system is unclear at this stage although reference is made to a computerised tool or more sophisticated form of JSB guideline

Costs

- It is proposed that fixed costs will apply up to the admission or denial of liability stage
- There will also be fixed costs to the end of the period for acceptance or rejection of an offer
- Fixed costs will be calculated to reflect only the work needed to comply with the new process
- Fixed costs will not include the costs of referral fees, although it is unclear if this is to be interpreted to mean that referral fees will be allowed in addition or not allowed at all
- There will be a fixed success fee to reflect the risk of taking on apparently good cases which are not pursued once liability is rejected
- Fixed costs and success fees will apply where there is an application to the courts to assess damages in cases valued under £2,500 only. Where the case is valued in excess of £2,500 differential fixed costs will apply

ATE Insurance (ATE) and Conditional Fee Arrangements

- It is proposed that the premium for any ATE insurance taken out at commencement of the claim should not be recoverable



- If however the claim value exceeds £2,500 and the parties cannot reach agreement over quantum then ATE insurance may be appropriate to cover the application for a hearing on quantum
- If liability is denied then, once again, ATE insurance may be appropriate

Timescales

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| • Solicitor/claimant meet and instructions taken.
Time from which claim form is sent | 5 working days |
| • Notification to defendant/Insurer.
Timescale for communication of liability decision | 30 working days |
| • Medical report agreed by claimant.
Timescale for sending out settlement pack | 15 working days |
| • Consideration of offer to settle.
Timescale for response to offer or counter proposal | 10 working days |
| • Counter offer made.
Period for consideration and negotiation | 20 working days |

Comment

In reviewing the DCA proposals it is important to bear in mind that at this stage this is simply a consultation document and that nothing is set in stone. There is much within the document which is very positive and the proposals to simplify the claims process and, crucially, to reduce legal costs, must be applauded.

We believe however that there are three major issues arising from the consultation document which will require the particular attention of Claims Managers, namely:

- Claims notification procedures - notification by way of standardised claim forms rather than detailed letters of claim.
- Investigation timescales and period for a response on liability - reduced from three months to 30 working days
- Impact on reserving - Costs reduction - by introduction of a fixed cost regime

In the event that these proposals are adopted they will have a fundamental affect upon the way fast track claims are handled going forward such that, Insurers are likely to have to review:

- Working practices
- Resource levels
- Reserving and underwriting philosophies



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