



FOIL UPDATE

May 2009

Meeting with the Association of District Judges *Views from the DJs*

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Fast-track

Although the fast-track limit rose on 6 April to £25,000, the 'one-day trial' rule still applies and only cases which can be resolved within a day should be allocated to the fast track. Cases which will take more than a day should be identified at the allocation stage.

The judges confirmed that they will be resisting any tendency for solicitors to over-estimate trial estimates to move cases out of the fast-track, although genuine applications will be treated sympathetically. Any fast track case which becomes problematic should be notified to the court no later than the pre-trial checklist stage.

The same presumptions on directions will still apply on fast track cases, even on the higher value claims. Single joint experts will still be the usual approach. Judges will not be treating cases in the £15-25,000 band as a hybrid between fast track and multi track.

Pre-action Protocol Compliance

The focus of the discussion was on the need to get the medical evidence on the table at an early stage and act upon it. Some concern was expressed that defendants do not always give the matter sufficient attention in the pre-action stage and it is common for defendants to be seeking evidence from an expert whose identity is still not known at the AQ stage. For the defendants, concerns were expressed at the failure of some claimant lawyers to make the medical evidence available prior to issue. All agreed that second experts were to be avoided: neither party has an entitlement to its own expert evidence.

Pre-action admissions – Memorandum of Understanding

The Memorandum (available on FOIL's website) has been circulated widely. No problems have emerged to date.

Availability of Experts

Concern was expressed by the judges at the tendency for experts to dictate the timetable for litigation; the judges are of the view that this requires strong case management by the court. [Following the meeting FOIL is speaking to the expert witness institutions for their take on this point].

One particular problem is the reluctance to go outside the 'usual pool' of experts which creates delay. The number of experts on the APIL database has fallen slightly, possibly due to increased pressure to meet NHS targets. This could create a reliance upon retired experts with no up to date clinical experience. There is a reluctance to instruct registrars, not least because of their frequent moves around the country.

It was agreed that CPR PD 35 para 6A, requiring a copy of the directions order to be served upon the expert, is very important.

Service levels at the courts

It was acknowledged by the judges that standards of service are declining. Attempts are being made to improve the situation but no significant developments are anticipated.

FOIL expressed concern at the courts' requests that hard-copy documents should not be sent in addition to faxed copies. From the courts' point of view this saves additional file-handling and waste. E-mail is a better solution from the point of view of both parties but not all DJs are willing to accept direct e-mail.

If there are problems with court staff a letter should be written to the District Judge personally.

Credit Hire

District Judges are critical of the current regime, believing that too much court time is spent on the issue. Two possible solutions were mentioned: a requirement that the claimant plead reliance upon impecuniosity expressly would provide a partial solution; a procedure under which the innocent party's insurers provide their insured with a replacement car could prevent the funnelling of the innocent party to a credit hire company.

Fraud

The ADJ remains concerned at fraud cases, particularly concerning RTAs. There is a high level of awareness of the problem on the district bench and a feeling, rightly or wrongly, that before 'Kirk' insurers were not taking the point as often as might be justified. In London the Designated Civil Judge is keen to know of any findings of fraud to enable the police to be notified, but, in the DJs' view, fraudulent claims often do not come to trial. APIL remains concerned that inappropriate allegations should not be made.

Guest speakers

When acting as guest speakers at small events DJs need to feel they can speak freely, without fear that personal remarks will be reported afterwards. A simple protocol might solve the problem – the issue will be discussed further.

The next joint meeting will take place on Tuesday 20 October 2009.

If you have any comments on the issues raised please contact Shirley Denyer on Shirley.deny@foil.org.uk or use the discussion forum on the website.

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