

FOIL**Prepared by Kysen PR**

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| Date | November 2016 |
| Publication | Modern Claims Magazine |
| Type of publication | Insurance |

Modern

CLAIMS MAGAZINE



Personal Injury still lagging behind in justice reforms

The Government plans radical change in our justice system. The 15 September announcement “Transforming our Justice System” may not take matters much further or come as a surprise, but the intention is clear.

For many involved in personal injury claims, there was disappointment that the announcement contained nothing about the reform of soft tissue injury claims. A consultation on those proposals, which includes banning general damages for pain and suffering in low value claims and increasing the Small Track limit in personal injury claims, was originally planned for March 2016.

There is still no hint of how the Ministry of Justice (MOJ) plans to link up soft tissue injury reform with the wider issues of the Online Court and access to justice.

The extension of fixed fees beyond Fast Track personal injury and intellectual property claims has been long awaited. The Government’s announcement that fixed fees will be extended “to as many civil cases as possible” will be welcomed by the insurance industry. Yet the Government’s announcement has no timetable and only the vaguest indication that “senior judiciary will be developing proposals on which we will then consult” and the promise of legislation “in due course”.

The announcement in relation to the Online Court similarly tells

us little but does indicate the Government accepts Lord Justice Briggs’ proposals in principle and provides a commitment to digitisation, the Online Court and simplified rules to support it.

The Chancellor set out the principles of soft tissue injury reform last autumn. It is probably fair to say that the MOJ underestimated what was involved in achieving his objectives. Most stakeholders, for example, now accept that simply increasing the Small Track limit will not work.

A new process for handling pre-action claims that can be accessed by Claimants is needed with an efficient process for those cases that cannot be settled without proceedings. Building such a system will not be quick or easy. The Online Court could be part of the solution but there is a significant difference between the Government’s original timescale for soft tissue injury reform (2017) and the likely start date for the Online Court (2020).

One solution might be to bring forward a pilot of the Online Court specifically for personal injury claims. This would help the Government implement its soft tissue injury reforms and test what, on any view, is an ambitious plan to transform our justice system. ●

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