

APIL Research – PI Practice, Legal Expenses Insurance and Referral fees

STATISTICS, VIEWS & COMMENTS

What are the key outcomes of our surveys?

- 53% of respondents envisage still practising personal injury law in five years' time.
- Those who responded to us indicated a high level of experience.
- Almost half the respondents have made changes to their practice structures in the past five years.
- Many firms have seen a decrease in PI workload in the past five years and there are still concerns regarding the impact of the small claims limit, were it to rise.
- Difficulties have been expressed by some of obtaining work without paying a referral fee.
- Continued worries regarding claims management companies.
- Concerns regarding panels and issues around "closed shops"
- Ambivalence about what is felt to be a necessary increase in the use of paralegals and how this might affect other qualifications.
- Lack of transparency, for the client, about the system of referral fees.
- A call for greater enforcement of regulations on referral fees and levels to be capped.

How is APIL responding?

APIL's focus is the injured person and ensuring people have proper access to the civil justice system and independent legal representation. We do not involve ourselves with the individual commercial decisions of APIL members' practices or chambers, provided, of course, we do not have any reason to believe that an APIL member has breached the organisation's code of conduct.

The focus of our work is to ensure injured people have the best justice system possible.

APIL staff will now work with APIL members to:

- **Revitalise our freedom of choice campaign.**
- **Campaign for more stringent enforcement and control for referral fees.**
- **Enhance our support and information services within APIL's business support forum.** Plans are already underway for the organisation of another APIL business conference in 2008, to provide training information, access to key business providers and other business networking opportunities.
- **Widely promote APIL's code of conduct and consumer charter ensuring victims' interests always come first.**
- Continue with our involvement with the Government's work on case track limits and the claims process to **fight for a workable civil justice system and maintain the small claims limit.**

APIL Freedom of Choice campaign – Legal Expenses Insurance

Legal expenses insurance

APIL supports the provision and use of legal expenses insurance provided injured people are not denied access to a solicitor of their choice or are not penalised for choosing their own solicitor - which would contravene both a European Directive and the Insurance Companies (Legal Expenses Insurance) Regulations 1990.

The association is also keen to ensure that the level of indemnity is sufficient to cover the costs of investigating and pursuing any claim and that, if necessary, extends to the beginning of proceedings and taking the case to trial. Arrangements between the legal expenses insurer and solicitor should not be so restrictive that they prevent the solicitor from properly pursuing the claim on behalf of the accident victim. It is also essential that the policy should explain very clearly what is covered (eg claimant's costs and, subject to indemnity, defendant's costs).

Our work to date

A series of meetings with the insurance (now the financial) ombudsman to emphasise the importance to claimants of the freedom to choose their solicitor. Meetings were ultimately inconclusive, with ombudsman recommending that he would not accept bulk evidence from APIL, but would examine individual cases sent to him. Members were advised to that effect.

- Counsel's opinion was obtained on the issue of freedom to choose one's own solicitor under the terms of BTE LEI policy – this was discussed with the ombudsman who remained unpersuaded.
- Approaches to the Financial Services Authority were made, which referred APIL to the (then) Department for Constitutional Affairs. DCA referred us to the Office of Fair Trading, where the issues of freedom of choice of solicitor, mechanisms of the ATE and BTE markets, levels and costs of cover, were all discussed.
- Approaches were also made to other government officials from the Treasury and the DTI.
- Discussions were held with consumer groups, especially Which?
- Approaches to the European Commission by the Law Society in Brussels were supported.

Unfortunately, in all the contacts made so far on this issue, it has been extremely difficult politically to demonstrate any consumer detriment with LEI panels.

Arguments have been met with a great deal of scepticism about APIL's motivation, with most of the individuals contacted believing the association's aim is simply to generate more business for its members. It is hoped, however, that the fact that the association has invested in a major piece of research in this area will persuade opinion-formers that the association's approach is claimant, rather than member-orientated.

Freedom of choice - APIL's next steps

1. APIL will renew its call for case studies to give us evidence of restrictions on freedom of choice and justice.
2. APIL will take our research findings and any case evidence to the financial ombudsman and the OFT.
3. APIL will inform consumer groups again of our issues and concerns and seek their support.

4. APIL will seek a meeting with the Law Society to explain our concerns and discuss possible options.
5. APIL will talk to legal expenses insurers to raise our concerns for the client directly with them.

APIL Enforcement and Control - Referral Fees

APIL never wanted to remove the ban on payment for referrals. As changes to the civil justice system started to take hold, however, it became clear that removal of the ban could be in the public interest. The Law Society's code which governs the ban had proved unenforceable and, in the end, APIL believed the consumer would lose out, as there was no transparency or consistency in what was a chaotic system.

This situation forced the association into the position of reluctantly supporting removal of the ban, provided the client is protected from unscrupulous operators and any arrangement made between solicitor and client is completely transparent. We also strongly supported the final wording in the professional rules stipulating that the agent who refers the client to the solicitor should not have acquired the business through any marketing practices which would not be allowed under the solicitor's publicity code, such as cold calling.

APIL's next steps:

1. APIL will be calling for robust enforcement of the referral fee regulations and will seek a meeting with the Law Society to share our findings and discuss potential improvements and strengthening of the regulations.
2. APIL will also make approaches to government, OFT and consumer groups to share current concerns and views from APIL members.

APIL Business Support

APIL does not get involved with the individual commercial decisions of APIL members' practices or chambers. We do, however, offer support, information and networking opportunities through APIL's Business Support Forum.

The forum offers:

- Best practice advice and information
- Business support networking
- Discussion forums to allow free exchange of information and business tips
- Training consortiums, bringing together small firms to have access to training, on their doorstep

In June 2008, APIL will host another business conference bringing together business advisers, experts and service providers to benefit both practices and chambers. At the event, APIL will review PI business practice issues and highlight changes and challenges to our members.

Putting the victim first

With its forthcoming re-brand, starting 1st January 2008, APIL will be publicising its Code of Conduct and promises to a wider public audience and members will be provided with a new client leaflet, which will highlight those promises and inform them of APIL's accreditation scheme.

Fighting for a workable civil justice system

APIL remains at the forefront of discussions with the Ministry of Justice and other stakeholders regarding streamlining the claims process. Government deadlines are slipping, but APIL is still being asked for its views, as government officials consider their next steps. APIL and its members worked hard to stop the small claims limit being increased and we will continue to maintain our position.

APIL supports:

- **Speed and efficiency** which provides **independent care** and representation **recognising the needs of the individual.**
- **Independent** legal representation.
- **An increase in levels of damages.**
- **Sensible risk management** and **“active” accident prevention and care by employers, local authorities, hospitals and the general public.**

Help us to help you and your clients

If you feel you can help us with any of the forthcoming work we have outlined, please do get in contact. We are always seeking evidence, statistics and considered views and experiences to help support our campaigns. Please call or email us.

Denise Kitchener
Chief Executive

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