

FireWire from Prime Legal Costs introduces the new legal costs clinic, your questions answered together with news and commentary from guest editors.



FireWire News

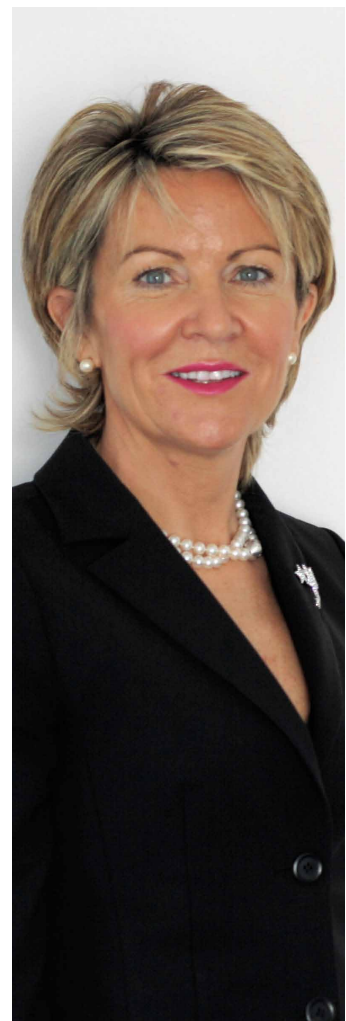
A very warm welcome to our February 2012 News update adding a splash of colour to a grey winters day...

A salutary voice representing the Motor Accident Solicitors Society now in its 20th Year said it cautiously welcomed the Transport Select Committee's follow-up report on the cost of motor insurance published last month, although with a stark warning that there is still a long way to go in "dispelling the myths" about whiplash claims and the need to make the insurance industry more accountable for their role.

Our forthcoming Guest Editor Donna Scully, who presently holds the MASS Chair, said: "We welcome the Committee's efforts to understand this complicated industry in order to secure a better deal for consumers. MASS is grateful to have had the opportunity to provide both oral and written evidence as part of the inquiry. "We're pleased that the Committee has called for stronger compliance with the existing data protection laws and penalties, which MASS has been campaigning for. But this requires firm and decisive action from the Government and regulators."

Donna added: "Despite its best efforts, it is disappointing that the Committee has still not been able to extract a firm commitment from the ABI that, after all the reforms, their members will reduce motor insurance premiums for consumers. We now urgently call upon Ministers to demand such a commitment. "However, Mass are deeply concerned about the recommendations on whiplash. The issue isn't just about fraudulent claimants. It is as much about insurers rushing to settle claims before they have seen medical reports. We strongly urge the Committee to look again at this issue in more detail and consider the full range of available evidence, before jumping to a potentially premature and highly damaging conclusion.

In going to press the mini insurance summit at 10 Downing Street gives some indication that insurers will pass on savings if there are real reductions in the legal costs derived from implementing the Jackson Reforms. The meeting seemed to overlook the opposing perspective by Claimants as they were uninvited a move strongly criticised by the Law Society.



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Referral Fees in disguise...

So the government refuses to make the payment or receipt a criminal offence leaving it to the regulatory authorities to Police the process on their behalf how will this be rolled out in practical terms and is it just the start of satellite litigation on the application of the system.

The Claims management industry provides referrals for a fee and this is their business model; in addition they may also provide a replacement hire vehicle, take statements and organise the vehicle repair not to mention the details of a competent legal representative. Take out the CMC and the individual can go straight to the insurer but will they still get a fair deal? This just takes us back to the question will claimants under the new regime have access to justice?

Jackson 5 Workshops

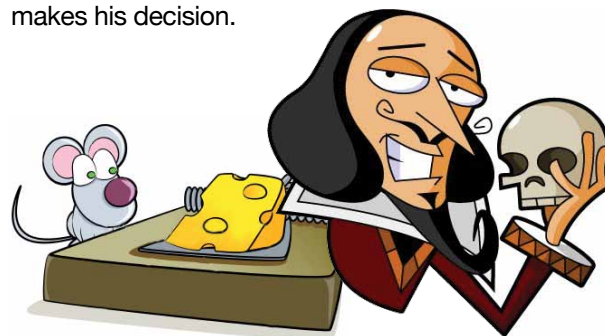
We are shortly arranging a series of workshops dealing with the latest updates on the Jackson reforms and the practical effects on current working models. The plan is to have an expert panel selected from Insurers; CMC's; Counsel and leading venture capitalists to provide a perspective on the proposed market floatation of some of the country's leading legal brands. Above all it is an open forum so everyone will get an opportunity to ask questions and essentially compare notes. The workshops will deal with the latest cases on costs and ATE premium recovery; effective ways to aid cash flow and maximise your recoverable costs. Please register early as we have already had significant interest. If you want to register for the event please email enquiry@primecosts.co.uk.

ABS Registrations lodged with SRA nears 100

Is it just the time of year or are businesses really feeling the 'love' for law firms? The advent of the ABS means the availability of external capital investment. Already Russell Jones Walker is being courted by an Australian firm and now Silverbecks are being bought subject to regulatory approval by the SRA. They are joined by nearly 100 applications for permission to register an ABS from an incredibly diverse market. Currently most law firms are financed by such capital as the partnerships are willing to invest, whether by banks, other lenders or sometimes their own members. The Partnership model historically forces a business to under capitalise because the profits are not retained, which is largely down to tax reasons. Therefore growth can be restricted by the availability of capital investment outside the traditional firm; here lies the real attraction to the ABS model.

The Mouse-trap to Shakespeare's Hamlet

The world of the Costs Draftsman and its ways and practice is a mystery to many. However, it can be considered as a play within a play, The Mouse Trap to Shakespeare's Hamlet and within it is a world of micro litigation. Bill to Claim Form, Points of Dispute to Defence, Part 47 to Part 36. Not least the case law is quite different. But simple words, the building blocks of any language, are the same surely? Re: Peel -v- Beasley 2007 involved an appeal as to whether the 12.5% success fee was recoverable under 45.11 CPR as reasonable within the meaning of 44.4 CPR. 45.11 CPR states "(1) A claimant may recover a success fee (2) The amount of the success fee shall be 12.5%" The success fee was recoverable. Simple enough, you say. However, the reasoning was somewhat convoluted. Under paragraph (c) [44.4 CPR] the word used is "allow". Counsel Miss Ailing submits that taken in conjunction with "May" in 45.11(1) this imparts discretion to the Court. It is clear to me that where there is discretion the judge first considers the amounts involved then makes his decision.



There is no magic in the word allowed. CPR45.10 plainly this gives discretion to the Court. The amount of the payment will therefore be a matter of discretion for the Court, but I emphasise the important words are 'The Court'. Before turning to the word 'may' it is important to observe that throughout the CPR the words 'must' 'shall' and 'may' appear in many different contexts. However, there are instances where rules impose Mandatory provision with the use of the words 'must not'. I think it right to assume that the use of the word 'may' has been carefully thought out. "The judge now refers to Master O'Hare in *Wetzel v KBC Fidea*. "Although it uses the word 'may,' 'may' does not need to be 'may in the court's discretion. 'May' can mean 'may if the circumstances permit.'" So it's becoming clear? Alas no! "His Honour Judge Stewart in *Kilby and Patel* said this...CPR 45.11(1) could have put the issue beyond doubt if, for example the word 'shall' had been substituted for 'may.' However the word 'may' is often capable of meaning 'shall' and particularly so if it follows a pre-condition which has to be fulfilled." I 'may' go for a lie down now!

Holding our Interest: Simcoe v. Jacuzzi Group

As mentioned in last month's Firewall, this case was to be heard on the Interest point alongside Motto v. Trifugura which settled at the door of the court under terms not disclosed. However following the settlement of Motto on private terms, the case proceeded to be heard on 30th and 31st. January 2012. At the hearing, the court asked for written submissions on the apparent contradictions between the 1991 interest statutory instrument and sections of the CPR. These were due within 7 days (by 6th. February 2012) and reserved judgment is expected to be handed down 6 weeks after this. Calendars are marked for w/c 19th. March 2012.



Your Feedback is always appreciated

Including the good, bad and the ugly...we want to make this newsletter an altogether better read and relevant to you and your work types. That is why we will be soon publishing several different versions of Firewire which will be sent to our subscriber subgroups. It is a trial which will run for the next three issues so if you receive Firewire and it is not relevant to your practice area please tell us and we can fix it! We know you like guest editorials and will continue to seek out the 'legal influencers' if you think of someone who should be considered, again just let us know. Many thanks PLCed.

WIN!!! £50 Marks & Spencers vouchers

There is yet another chance to win £50 Marks & Spencers vouchers, enough to dine in for two for a whole month, well nearly and thank you for the suggestion from anon PLCed. We do hope that we can publish the lucky winners details in the March 2012 edition.



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