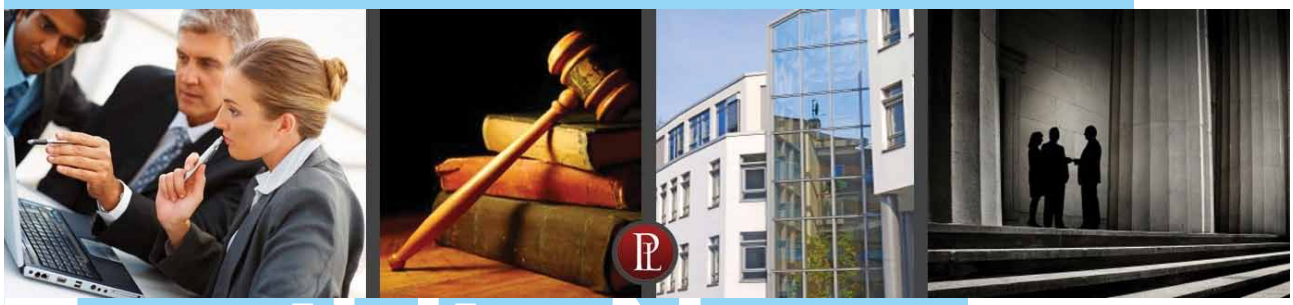
FireWire from Prime Legal Costs introduces the new legal costs clinic, your questions answered together with news and commentary from guest editors.



Frostbite News

A very warm welcome to our January 2011 Frostbite update.

Prime Legal Costs provides you with a full legal costs drafting and negotiation service designed around you the client. We aim to address the key issues you want answered. Our articles are topical; practice area related and sometimes light hearted in theses testing times. We are now on twitter @primecosts and facebook so come and visit us soon - *PLC Editor.*

Blackburns Last Straw

By Neil Rose Editor, Legal Futures

Once again the Blackburn MP Jack Straw has spoken out on calling for a ban on trading driver details involved in accidents after drivers in the North seem to have weaker necks than they're southern counterparts or so the statistics now show.

Last year Mr Straw revealed that insurers were selling on clients' details to personal injury firms for between £200 and £1,000 a time, causing rocketing insurance premiums and not just solicitors fees. In fact one could pinpoint the blame on fraudulent claims, dubious claims of whiplash that is simply non-existent.

A problem identified is the cost of investigating potential fraudulent claims as opposed to taking an economic view to avoid escalating legal costs. The proposal for an outright ban on referral fees does not go far enough according to Straw; and a ban on whiplash claims is now being advocated.

The MP's findings have inspired a campaign for referral fees to be outlawed; the no-win-no-fee system overhauled; whiplash to require a stricter burden of proof; a clampdown on the trade in personal details; and even tougher regulation of claims companies.

The Transport Select Committee published a follow up report on the cost of motor insurance supported a number of Mr Straw's calls, but said referral fees should not be banned altogether but made more transparent.

Transport Select Committee Report on the Cost of Motor Insurance published on the 12 January 2012 (and available in full via pdf download please contact us for further details).

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ABI Responds to Transport Select Committee Report on the Cost of Motor Insurance 12 January 2012

Responding to the publication today of the Transport Select Committee report on the cost of motor insurance, Nick Starling, Director of General Insurance at the ABI, said:

"We are pleased that the Transport Select Committee has recognised that spiralling personal injury claims are the real reason car insurance premiums have been increasing and made recommendations for meaningful reform. It is absolutely critical that Britain's whiplash epidemic is tackled once and for all and the Select Committee's acknowledgment that the bar to receiving compensation for whiplash is too low is a step in the right direction.

"The Committee is also right that the fees lawyers receive need to be reviewed as they currently add unnecessary cost.

"Every motorist wants the best deal and insurers are determined to deliver value for money motor insurance. Our customers are fed up of getting text messages, fed up of the compensation culture and have had enough of paying higher car insurance premiums to line the pockets of ambulance chasing lawyers and claims management companies.

"We are baffled though that the Transport Select Committee has again called for the transparency of referral fee arrangements of insurers. Referral fees should be banned altogether and not made more transparent - and that ban should apply to all organisations receiving them, not just insurers. Banning referral fees and, crucially, reducing legal costs will improve the situation for customers."

ABIS join forces with the ILS....

The similarities that can be drawn between the plight of the Law Society failing to represent the interests of all its members and the ABI remaining silent on its members who clearly derive substantial income from the sale of client data is very clear indeed perhaps we should have the ABIS (Association of British Insurance Solicitors) and ILS (Insurance Law Society), all slightly tongue in cheek but a representative voice without bias is needed to ensure all interested parties are given a fair hearing.

An 'Interesting Point' – the end of Motto?

As no doubt, everyone is aware the case of Motto and Others v. Trafigura and Another has rumbled on in respect of costs throughout 2011, not least of which has been due to the sums of money involved, when the Claimants' bills of costs were served the Defendants were dismayed to find that they totalled £104,707,772.72. That figure includes success fees for both solicitors and counsel of 100%, and an ATE premium of £9 million. Along the way the case has also been instrumental in setting case law and precedents in respect of ATE premiums and Success Fee recovery. It was further set to create precedent in respect to interest on costs following on the decisions in Gray v Toner (11 November 2010, HHJ Stewart in Liverpool County Court), and Bridle v Ikhlas (22 February 2011, His Honour Judge Charles Harris QC). This was to be heard in the SCCO on 30/31.1.12.

However, ahead of the hearing on 12.1.12, the parties reached a settlement of the issues and consequently the case has been removed from the list. It is understood that the settlement has been reached on 'private terms' which are not disclosed.

Is this the end of the matter?

Apparently not, as to be heard alongside Motto was the case of Simko v. Jacuzzui Group, which was being heard alongside Motto as there were similar points of issue, but not of costs quantum. We now await the outcome of this case to set the precedent on the issue of interest on costs.

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Estimated time raises objections in bill of costs, citing Brush v Bower Cotton [1993] 1WLR 1328?

But have they referred to the case correctly? They rely on the passage that states that "only in unusual cases will any substantial allowance be made for unrecorded time. " However, the position is not as straight forward as that might suggest.

Consider the following:
In Re Frascati (in chambers) (2nd December 1981 unreported) it was said by Parker J that: -
"The right to charge cannot depend upon the question whether discussions are recorded or unrecorded. It must depend initially upon whether they in fact took place and occupied the time claimed. If they are recorded in attendance notes then this will no doubt ordinarily be accepted as sufficient evidence of those facts. If they are not so recorded it may well be that the Claimant is unable to satisfy the Taxing Officer or Master as to the facts. But neither the presence nor the absence of an attendance note is conclusive."
...and that in Jemma Trust Company Limited v Liptrott and Forrester (No. 2)[2004] Costs L.R.610 it was said: -
"The criticism that is made is that there is no distinction to be drawn between contentious and non contentious work so far as the obligation to keep attendance notes is concerned. As to this, while I agree that the function of attendance notes is precisely the same in both kinds of work so far as assessment is concerned, it seems to me wrong to speak of an "obligation" to keep attendance notes. That language suggests that failure to keep attendance notes is a duty, breach of which would be visited by the sanction of total or partial disallowance.
The true position is that in both kinds of work the burden is on the solicitor not only to show that the time claimed has been spent but that it has been reasonable to spend that time. The keeping of an attendance note is one way, but not the only way in which this can be demonstrated. Failure to keep such notes exposes the solicitor to the risk of being unable to prove the reasonableness of the time spent."
It appears, then, that it isn't the case that unrecorded time is unrecoverable, (or for those whose glass is half full, it appears unrecorded time is recoverable,) the burden of proving the reasonableness of the time spent, will, however, rest with the Receiving Party solicitor. If no record of the time is made then this will not mean it is unrecoverable, but it will be more difficult to justify the same.
However, before you rush off to make sure Proclaim is up to speed, consider Re Kingsley (1978) 122 Sol Jo 457.
"I ought to add that this case illustrates the dangers which are present if reliance is placed on a modern system of recording, without at the same time retaining the old and well tried practice of keeping attendance notes showing briefly the time taken and the purport of the work done day by day. It may be that this case will invite attention to the importance of appreciating the limits to which the computer system can be used in cases where taxation of costs must follow litigation and to the necessity of preserving as well the use of the traditional system."

Prime Legal Grows

Well what a busy Christmas we've had here at Prime Legal, in the run up to Christmas we have been fortunate to secure more space on site at our existing offices. Nevertheless, the holiday period saw intense activity getting the offices ready for a New Year start. We have had an entirely new IT system and phones installed, in true PLC spirit we were even in at 6am on New Year's Day.
December also brought us a round of interviews for our planned expansion and have recruited a further 3 staff from leading Legal250 firms to complement our existing team, now with a good balance of claimant and defendant experience which should assist our competitive edge.
Our address and telephone numbers remain unchanged albeit with an additional line which will feature on our new letter head coming to a mailbox near you. We wish you well for the New Year and look forward to speaking with you over the coming weeks. PLC ED.

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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 sub groups. 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 PLC ED.

WIN!!! £50 Marks & Spencers vouchers

We will be providing one lucky individual subscribing to Prime Legal Costs FireWire vouchers to the value of £50 from Marks & Spencers (or equivalent retailer/ donation upon request). The winner will be selected at random from our list of subscribers.

Last months winner decided to donate to our nominated charity which was very noble indeed for which we thank you. We do hope that we can publish the lucky winners details in the February 2012 edition.

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Should you wish to discuss anything further or request a brochure detailing our full services, please do not hesitate to get in touch on 0844 887 1214 or take a look at our new web site www.primelegalcosts.co.uk