



The Liability Insurers Agenda for Injury Claims Process

An Amicus Briefing

September 2006

Executive Summary

- **There is a massive lobby by the Liability Insurers for changes to the injury claims process that will seriously damage access to justice for tens of thousands and save them millions every year**
- **They make bold assertions that are false but convincing to many, apparently including the DCA and consumer groups**
- **The unions have a greater experience of claims handling than any other consumer group and can use that experience to speak out for the benefit of all consumers**
- **It's time we spoke out against the Liability Insurers and any others whose plans will damage access to justice for all**
- **It's time we stopped being shy about the enormous good unions do in the field of claims**
- **We are not afraid of change and agree that efforts are required to cut costs in the system, bit not at the expense of union members, their families or the rest of the population who might need to make a claim one day.**

Liability Insurers and the Association of British Insurers lobby

We'd like to explain how the LI's and the ABI (the mouthpiece for the LI's) are doing their utmost to mislead in their own interests and that of their shareholders.

There are a number of changes that would provide great benefit to them at the expense of the consumer. The biggest prize for the LI's is a rise in the small claims track limit for injury claims – currently set at £1,000, which is a lot of money to anyone on a low wage. If the limit goes up, or other changes are made that the ABI have asked for, the prospect of many thousands being without representation and going uncompensated or under compensated is guaranteed.

A catalogue of deceit

1. The latest story – insurance premiums are going up

On 31 August 2006, Norwich Union/Aviva, one of the biggest LIs, put out a story that motor insurance premiums were going up by up to 40% due to the rising cost of claims. And it would be young driver who suffer most.

It's just not true, says a senior representative of Axa liability insurance. They are launching a new product "Pay As You Drive", "a revolutionary new type of car insurance" designed "for young drivers". They intend to sell 10,000 new policies. It is also stripped bare of such things as cover for physiotherapy to help the injured back on their feet.

2. The ABI/Frontier Economics Report

On 11 July 2006 the ABI launched its latest report which concluded that statistics show you are more likely to receive higher compensation, if you are not represented by a lawyer – instructed by a union or not.

But they won't release the full report, let alone the data on which it is based, but that is not unprecedented in recent times. We know, however, that the conclusions are false, as the approach was fundamentally flawed. There was no attempt to compare like cases.

To be fair to Frontier Economics, they were restricted in the data they could use – supplied by LIs - and said their report amounted to "an initial view" and what was needed was "extensive work with firm case files".

We have plenty of case examples to demonstrate how much people may suffer without proper representation. Some are available on our website.

The LI's have a clear conflict in the way they deal with cases and when they say they can be trusted to represent the interests of claimants making claims against their policy holders, "nothing could be further from the truth" in the words of a former senior official from the ABI.

3. The letter to MPs

On 21 July 2006, the ABI sent a letter to all MPs who signed an Early Day Motion, which set out opposition to changes to the small claims track, which would seriously impact on access to justice. They boldly told the MPs: "A limit of £5,000 for [the small claims track] for personal injury claims would restore around 90% of the claims which have dropped out of the system since 1991..." and...

4. Improving the Small Claims Track for Personal Injury

In their July "research" paper "Improving the Small Claims Track for Personal Injury" they say "In 1991...around 50% of personal injury claims were covered by the small claims track".

But both of those claims are false to an astonishing extent. The official court figures on the DCA website do not go back to 1991, but the number of PI cases in the small claims track went up significantly from 2004 to 2005 (by 7%), when the number of cases generally is falling year on year. The earliest figures available are for 1999, since when the number of injury cases in the small claims track as a proportion of

money claims in the county court has always been less than 1% (for good reason).

The fact is that if the ABI and the LI's had their way 90% of injury claims would have to go to the small claims track – we agree the ABI's figure about that. But many thousands would go without representation, and go under compensated or be denied compensation. We have a lot of case examples to demonstrate that.

5. Which? research

The ABI claim “recent support for increasing the small claims limit from...Which?” – but they took unpublished Which? research completely out of context. The research indicates satisfaction among court users, when dealing with the small claims court in relation to “consumer” disputes, like suing a shop for a faulty pair of shoes. The research has nothing to do with the issue of unrepresented claimants attempting substantially more complex task of claiming trying to obtain the correct amount of compensation for an injury.

And there's a big difference that we are happy to explain, but the Lord Chancellor said “no” to an increase in 1998 and “The rationale of up to £1,000 is that it is really cuts and bruises and minor injuries that can be dealt with in the small claims court. Broadly speaking, we are talking about anything in excess of that—any limit is arbitrary—because personal injury cases are more complex and deserve not to be dealt with in that court.”

6. The Inflation Argument

At least it seems they have abandoned their inflation argument. One of the biggest LI's, Norwich Union, told the Commons Select Committee, “Looking at inflation generally since 1991, the figure of £1,000 should now be in the band £2,500-£3,000.” Nobody challenged that at the time, but in fact the true figure is less than £1,500.

7. The last rise was in 1991, or was it?

And that assumes that we accept that the last rise in the limit was in 1991. In fact it went up in 1999, when the £1,000 figure applied only to the injury, whereas before it included any claim for lost wages, damaged property and the like.

8. The level of damages

Another thing the ABI and the LI's will not tell you is that the level of damages is too low. In 1998 the Law Commission concluded levels of damages were too low. It recommended that awards for injury of less than £3,000 should be increased by a factor up to 1.5 at that time and take account of further inflation. Those recommendations have never been implemented.

9. The Care and Compensation initiative

And yet the glossiest brochure of all came out less than a year ago and claims to care about assuring us all that they can be trusted to

encourage more claims and that they have the interests of claimants at heart. “Nothing could be further from the truth” says a former senior official of the ABI itself. This stance has driven some Legal Expenses Insurers, not wholly owned by ensuring by Liability Insurers to set up their own group (the LEIG), who speak out against the LI’s.

The LI’s and the ABI have a “Universal Claim Form” drafted for their purpose which asks the unrepresented claimant, who is at fault and was it you? Would they then explain that the thousands who do not need to prove negligent fault are still entitled to damages?

10. Low offers and denials

They cannot be trusted. Representatives of LI’s have said more than once that they do not admit liability as often as they should as they have no incentive to do so. When they do admit liability, they take a loophole in the law, to resile from earlier admissions, as in the case of *Sowerby v Charlton*.

Unlike the ABI we would welcome the opportunity to provide information and data to back up our arguments to improve the process and to rebut the arguments of others, who are misleading others.

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