



Justice for All

www.soclalaw.org.uk

Small Injury Claims by Ross Cranston QC

The Society is in the process of trying to formulate a policy on small injury claims. It has established an expert committee, chaired by Martyn Day.

The two major problems with the existing system are that the costs are disproportionately high and that the level of costs encourages undesirable practices such as claims farming. The question is whether action can be taken to overcome this. If it can, the balance is in favour of retaining the system as it is, but amended. If it cannot, it would seem to us the balance moves against the existing system in favour of bringing in a new system. Lawyers have for years argued that the benefits of the existing system so outweigh all other considerations that it should be retained regardless of the cost. We do not accept that.

In our pamphlet we argue that there are various ways to bring small level injury claims under control so as to ensure that costs are proportionate to the level of injury claimed. If our proposals are adopted we believe that it would ensure:-

- a) the integrity of the system- a system where the level of costs are comparable to that of damages simply cannot have a long term future;
- b) the profit margins in cases would be such as to discourage advertising, the payment of referral fees and cold calling;
- c) those paying insurance premiums would be paying primarily to ensure that claims are met rather than legal fees.

The question is how this is best achieved, in other words, how to reduce costs. There are three possible routes:-

- a) market forces- ie the larger firms would negotiate with the insurers for a low cost scheme;
- b) the fixed fee system, already introduced in the rules for small road accident claims, is further developed so fees are a percentage of damages;
- c) legislation limits costs as a percentage of damages up to a certain level.

There seems to be a wide acceptance within the personal injury world that the current costs regime is unsupportable in the longer term. The pressure on costs for claims under £10,000 is ever downward. Government could, therefore, simply sit back and leave it to a) and b) for this to be achieved. But even if costs were limited in this way, there is a question as to whether for small cases, say under £2,500, it would still be too expensive. For cases above £2,500 there should be no difficulty in developing a fixed costs regime that ensures the injured person receives advice while ensuring the costs are kept proportionate. For a case worth, say, £1,500 it will be far harder for lawyers to advise if the costs are capped at, say, £500. For these small cases there must be alternative sources of advice to lawyers. We are inclined to the view that the tie in between the costs levels, and the problems caused by advertising, cold calling, referral fees and the like are such that this as an area where, unless in the near future costs come down even further, it is better to be proactive. There is no reason for lawyers to be involved in the very small cases provided that some advice is available and there is some sort of back up, ombudsman type mechanism for those unhappy with the outcome. Insurers need also to be subject to some controls and to an audit of their settlement offers. Access to justice can be maintained while maintaining the integrity of the system - essential for those who are more seriously injured.

The Society of Labour Lawyers is currently spring cleaning its membership records. Our hope is to move the majority of our contact with members to e-mail only to reduce the society's costs. If you receive JFA by post but have an e-mail address that we don't know about please let us know - luciewibberley@yahoo.co.uk. Similarly if you know of a member who has lost touch encourage them to make contact so that we can collect their up to date contact details."

Westminster Workshops

Family Law and Welfare Reform

Speakers: Frank Field MP

Chair: Ross Cranston QC

Tuesday 27th June, 6.30 - 8pm
Portcullis House

Frank Field has an excellent record and considerable experience in the area on which he will speak. He has consistently put forward imaginative and compelling proposals for welfare reform which are yet to be implemented. Come and hear how Labour's commitment to provide a decent income for all, including the most vulnerable, and children on the bread line, can be improved; and be affordable by a Government having to balance the competing demands of the 21st century welfare state.

We hope Frank will also be able to touch on the difficult subject of good, and affordable, pensions for all. Ross Cranston QC will chair the meeting.

Jennifer Horne-Roberts, Convenor Family Law Group will be holding a consultation meeting later this term to discuss the Law Commission's imminent report on reform of the law relating to heterosexual cohabitants and their families. All interested parties will be welcome to attend. www.horne-roberts.co.uk

Criminal Law Workshop

Punish the wrongdoer, defend the children of the poor.

Diversity and choice must be part of the future of criminal legal aid

Speakers: Vera Baird QC MP, Roger Smith and Oba Nsugbe QC

Thursday 6th July, 6pm
Portcullis House

The little seen motto that is our title is carved on the front of the Old Bailey. The Government is enthusiastic in its pursuit of the first clause, but does it have the same energy for the second? The Society of Labour Lawyers has consistently supported the government's attempts to redirect funds from the most expensive parts of publicly funded criminal work towards desperately under funded parts of the civil justice system. The government tasked Lord Carter to chart the way forward for the public funding of criminal defence work, but what effect will his proposals have on the racial diversity of the profession that the

government has so long supported? And will Carter's reforms deprive those accused of crime of any choice as to whom they entrust their life and liberty?

Criminal Law Group's Westminster Workshop will address those issues. We have invited Vera Baird QC MP, former chair of the Society and now the minister responsible for criminal legal aid, to debate with Roger Smith, doyen of the left on legal public funding, and Oba Nsugbe QC, a leading black defence lawyer.

CPD points will be available and a hand-out, available by e-mail in advance of the meeting, will set out the background issues. Admission is free and open to any SLL member and their friends. Please contact the chair of the group, Paul Keleher on keleher@btinternet.com with any enquiries.

Shake off those mid-term blues at the Labour Lawyers Spring Dinner

June 8th, 7 pm for 8pm at the White Swan, Fetter Lane

Stirred, but not shaken by the local election results, we are launching our annual season of Westminster Workshops with a dinner at this very pleasant gastro pub. We have invited the whole team from the Department of Constitutional Affairs, which now includes our very own former Chair, Vera Baird.

The evening offers the chance to socialise with other comrades from the SLL and to meet the ministers who run the government's legal affairs. Those who came to this event last year will know that this gastro pub offers good food, good wine and a comfortable private room. The cost is £33 a head plus drink (when the first batch is used up). You can order from a short menu on the evening and pay on the night or cheque in advance (cheque is easiest for bureaucratic purposes).

WE are limited to 40 places and were over-subscribed last year, so please e-mail Joel Bennathan on joel@bennathan.fsnet.co.uk as soon as possible to reserve your place.

Ideas required ...

We are always looking for people who have ideas for working groups. Current groups include:

- Class actions
- House of Lords reform
- Cohabitants
- Family welfare reform

If you would like to get involved with one of these groups or set up your own, please contact the JFA editor, Eleanor Reeves at eleanorreeves@aol.com

Westminster Workshops (continued)

The Compensation System

Speakers: Baroness Ashton (DCA Minister), Ingrid Gubbay (Consumers Association), Fraser Whitehead, (Russell Jones and Walker), Martyn Day (Leigh Day and Co).

Chair: Ross Cranston QC

Wednesday 12th July, 6.30pm
Portcullis House

Over the last couple of years there has been a number of reviews in relation to the compensation of low level injury claims. There have been select committee reports, proposals from the Association of British Insurers ("ABI"), proposals from the Civil Justice Council, as well as comments and responses from many other organisations and individuals, not least the Association of Personal Injury Lawyers. It is not surprising that this area has been subject to so much attention. The introduction of Conditional Fee Agreements ("CFAs") in the mid 1990s was innovative and in many ways is to be welcomed, but it has at the same time raised a host of largely unwelcome ancillary issues that have been very difficult to resolve.

The introduction of CFAs has undoubtedly provided individuals who are injured with an easier route to the justice system and that has to be a benefit. But in achieving that many other side issues have arisen.

a) A major question is whether CFAs have fanned the flames of the so called "compensation culture" which is so much discussed in the media. The Daily Mail for one seems to be of the view that our courts are littered with barmy cases brought by avaricious lawyers.

b) The world of CFAs brought into our system the claims farmers, a phenomena that was unheard of prior to the 'no win no fee' system. Government legislation controlling the operation of the claim farmers is being enacted as we write and hopefully this will remove some of the excesses. Undoubtedly claims farmers are here to stay.

c) Advertising. Prior to the introduction of CFAs, advertising for injury cases was unusual. Now lawyers advertising their wares on television or the radio have become common place.

d) The small claims limit. The limit for all claims except for personal injury (and housing) is at £5,000 but for these claimants it has been kept at £1,000. This means the "no costs" rule of small claims does not apply for those more than £1000. There have been many calls for this limit to be raised.

e) There have been ever increasing concerns about the level of costs in small injury claims. A recent ABI publication showed that for cases under £10,000 the costs of the case can often be at around the same level

as the damages paid.

f) Referral fees. There has been much debate within the Law Society as to the practise of charging referral fees in personal injury cases. The phenomenon of lawyers paying hundreds of pounds per case to referrers is one that seems to be mainly limited to such cases. The idea of a lawyer paying £300 for a matrimonial case would seem ludicrous. Referral fees have reached a stage where the vast majority of personal injury cases are effectively treated as a commodity to be "traded" between institutions and law firms.

g) The injury lawyers' reputation. There can be little doubt that the atmosphere created by CFAs including the advertising, the trading of cases, the claims farmers, and the perception of there being a compensation culture, have meant a lowering of solicitors' reputations. The Law Society's attempt to rehabilitate that reputation by its campaign to portray solicitors as "heroes" was somewhat misguided. Undoubtedly with small injury cases playing a large role in affecting the reputation of lawyers, that is another reason that urgent steps need to be taken.

This Society of Labour Lawyers' workshop looks at these issues to see to what extent the issues being raised are genuine concerns and what could be done to improve the existing position.

Young Labour Lawyers Group

"Reforming Legal Aid; At what cost to Social Justice?"

Wednesday 14th June, 7pm
Boothroyd Room, Portcullis House

On 3rd April the Young Labour Lawyers were fortunate to hold a seminar meeting with the Solicitor General, Mike O'Brien QC MP. Attending were about 30 members and other interested people. We were treated to a frank and insightful overview of the Law Officers' work and of the legal-related challenges facing the Government over the coming years. A wide variety of views was reflected by the audience in a lengthy debate which followed the Solicitor General's talk. Many thanks to Bates Wells & Braithwaite for hosting us and providing wine.

The next Young Labour Lawyers meeting is hosted with the Young Fabians and is part of the Society of Labour Lawyers Westminster Workshop program. We intend for it to be the highlight of our year:

Speakers are: Lord Falconer, the Secretary of State for Constitutional Affairs, Stephen Hockman QC, Chairman of the Bar, and Teresa Perchard, Director of Policy for the National Association of Citizens' Advice Bureaux.

Samuel Townend
Chair, Young Labour Lawyers' Group



This week's "piece" was going to be given over to the first extract of Comrade Geoff Hoon's bitter-sweet memoirs: *Adventures in Administration: The Glory Years*. Following consultation with the editor's medical

team, however, it has been deemed that these extracts may be so exciting as to be dangerous for older or, as we say in the Society, wiser members.

Instead, your intrepid correspondent hurried off to the Lord Chancellor's gaff to bring you an exclusive: An interview with the new junior minister at the Department of Constitutional Affairs, our very own Vera Baird QC MP TG (top geezer). She cut a relaxed but formidable figure, sitting before the famous wallpaper, her feet resting on the traditional ministers' footstool (or "dismore", as they are known).

"Minister", I kicked off, "Would Tony Blair recognise a human right if it bit him in the.."

A hammering at the door interrupted me and a man staggered in bearing a bunch of flowers the size of

Gordon's pride, marked "with the affectionate greetings of the Law Society".

I pressed on with the no-holds-barred. "Comrade, does John Reid's offer to resolve any points of difference with the Lord Chief by a "wee word in the car park" mark a new low in.."

Once again, a furious knocking followed by a chap with a huge bouquet, this time from the Bar Council. Even Vera was taken aback, muttering "Has Burnham Wood come to Dunsinane? Shakespeare".

I had no idea why she was calling me Shakespeare, but tried yet again.

"Prescott. What my readers want to know, Sister, is whether you would agree he is a complete.."

The by-now familiar pounding on the door was followed by a floral arrangement with an appended missive reading "Fond and respectful congratulations from all your old chums at the Criminal Bar Association". I gave up.

"What gives, Auntie Vee?" I bleated in confused defeat. "I can't say for certain, Kitty, but did I mention my new job covers the reform of legal aid?"

I swallowed hard and adapted my interviewing technique to the new found circumstances. "Can I buy you a drink, Vera?"

The Law relating to Cohabitees

The Law Commission expects to produce its consultation paper on the law relating to cohabiting (heterosexual) couples in the Spring 2006.

The report setting out proposals for law reform is due in the summer of 2007. It is hoped that the Commission will suggest a statutory scheme relating to resolution of disputes upon relationship breakdown.

The present situation, with case law attempts to resolve disputes using the machinery of trust law (see *Oxley -v- Hiscock* [2004]; *Stack -v- Dowden* [2005] for example) is unsatisfactory.

The Law Commission's main concern is to address ways of dealing with the financial effects for cohabitees and their children upon termination of their relationship by separation or death. It will consider the basis upon which income and capital provision should be attainable upon the breakdown of the relationship. It is to be noted that 40 per cent of all children are now born outside marriage.

The report will also consider Schedule 1 of the Children to Act 1989, which is rarely used, in obtaining capital provisions

for dependent children; whether cohabitants should be entitled upon intestacy; and the question of whether they have adequate protection under the Inheritance (Provision for Family and Dependents) Act 1975.

The report will compare proposed provision with the remedies for a) married partners b) same-sex partners under the Civil Partnership Act 2004.

The paper and report will also address the issue of cohabitation contracts and whether they should be enforceable by the Courts; and in what circumstances.

The Law Commission has asked that the SLL delay publishing a position paper on the issues involved in this project until after the publication of their consultation paper in the Spring. Then in the summer term SLL will hold a meeting with interested members in order to produce an SLL position paper on the law relating to cohabitees- as part of the Law Commission's consultation exercise.

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