

## Legal seminar summary

### 1 Presentation

Comments in addition to slide content:

- Although some uncertainty arising from new Prime Minister, new Lord Chancellor and Brexit, the key message today is the reforms programme is still carrying on. Confident in April 2020 implementation and emphasise this is not being rushed; the service must be properly ready. Also part of the Civil Liability Act, the new discount rate comes into effect 4<sup>th</sup> August.
- Emphasise while motor insurers are funding the delivery, all policy decisions are MoJ's alone; not the insurance industry's.
- In addition to work with the Civil Procedure Rules Committee (CPRC), MoJ is also working with the Judicial College on guidelines for valuing injuries with a mixture of whiplash and non-whiplash.
- Public test will include a mixture of individuals (unrepresented claimants), compensator users, representative users and others. The public test will not just cover the application, users will also be able to call the contact centre for support where needed to test the experience as a whole.
- Two technology providers supporting a substantial portion of solicitor and compensator integrations have indicated their intentions to be ready for integration testing from January.

### 2 Demonstration

Alan Collins (Product Owner, MIB) presented a live demonstration of the application currently being tested, including 'before you start' information, creating a new claim (claim notification form) and portal views for unrepresented claimants and compensator users at stages through the claim. The journey for making and accepting offers has also been developed and will be presented at a future event alongside the remaining parts, such as medical report and dispute resolution.

### 3 Q&A

#### 3.1 Dispute resolution

##### a) Will professional users be excluded from the ADR service?

- This decision has yet to be confirmed and MoJ is continuing to look at the scope of, and eligibility for, ADR.
- The original intention has been to offer this to only unrepresented claimants and there are issues about extending this to include professional users, particularly the capacity to support this.
- The original intention has been to offer ADR for both liability and quantum disputes.

##### b) Who will provide the ADR service?

- MIB is in the process of going to market for this and looking at what capacity and capabilities are available. A partner has not been selected for this yet.

##### c) What is the insurer's incentive to follow this; why not just deny all cases?

- The service will capture and analyse data to monitor the risk of these behaviours and highlight any issues in this area.
- Insurers will behave in a way that is commercially sensible to them - it is not in their best interests to block claims from progressing, forcing claimants to issue proceedings and increasing claim costs as well as affecting their claim reserving.
- ABI has been really clear with MoJ they want the insurance sector to be upholding the consumers' customers' and claimants' best interest throughout this process.

##### d) How clear will it be to claimants who is funding the ADR?

- The service will be designed to provide clear information that the claimant does not have to pay for ADR.



### 3.2 Medical reporting

#### a) How will claimants deal with additional / second medical reports?

- The medical reporting consultation outcome is expected to be published very shortly, which will help answer a number of questions around medical reporting activities.

#### b) How far does the compensator's obligation to pay for medical costs go; does it include specialist reports and second reports?

- Yes, Compensators are obliged to pay for all costs incurred to provide evidence for the claimant's injury, including specialist reports where required for some non soft-tissue injuries.

#### c) What is MedCo's expectation for making their changes in time?

- MoJ has absolute confidence MedCo will be able to make changes in time and is continuing to liaise with MedCo on this.
- For MIB delivery, the mechanisms for how the service and MedCo will integrate is not dependent on the consultation outcome – work has already started on how the service engages with MedCo.

#### d) Where liability is fully denied, how does this affect the claimant getting the medical report and the payment for this?

- We want to devise a simple route for those claimants who want to go to court to be able to firstly establish liability and then, once this has been determined the case will either fall, or the defendant insurer will accept liability and then be in the position to fund the medical report for the litigant.



### 3.3 Implementation timescales

#### a) Shouldn't the service be tested for as long as it takes rather than a particular deadline?

- Ministers are keen for this to be ready for April 2020. The plan is sensible, practical and achievable and there are a number of moving factors to consider that will not be rushed.
- Minimum viable product does not mean it will not be a high-quality product. We are trying to get the best delivery we can in accordance with the government deadline.
- MoJ will ultimately make the go/no-go decision during the first part of next year and will have to see what the end-to-end delivery looks like and what the public test response to that is.

#### b) Work is going in the right direction, but some of the third sector charities have concerns about April 2020.

- MoJ acknowledges these concerns and will be working with stakeholders in this sector over the coming months.



### 3.4 Credit hire

- a) Have MoJ taken on-board that a claimant issuing proceedings will need to the credit hire to be included in those proceedings?
- MoJ has looked very carefully at this and understand 80-90% of credit hire claims are settled. MoJ is working on a process to make clear what obligations a claimant continues to have after settling their personal injury claim to make sure the right information is available at that point.
  - Losses not sustained by the claimant (e.g. insurer recovery, rehabilitation, credit hire) will be handled outside this service.
  - MoJ will keep under review the future possibility of rehabilitation and credit hire being covered within this service.
- b) Is there an intention to explain the implications of credit hire claims and meaning of these terms to claimants?
- Work is ongoing to provide clear guidance to claimants within the service.
  - The contact centre service will also be available to help provide further explanation and support for those who need it.
- c) If a claimant settles their injury claim through this service, but still has credit hire, does it fall within the small claims track limit?
- It will depend on the value of the credit hire. If it is under £10,000 then yes, it will fall into the SCT.

### 3.5 Fraud, controls and behaviours

#### a) What protection is there to prevent insurer behaviour such as consistent denial of liability?

- Information relating to insurer behaviour will be publicly available and will be utilised by MoJ and the regulator as required. In respect of potential for insurers to delay claim progress, it is not in insurer's interest to do so since this would impact required holding of reserves.

#### b) What information will be available around the trends of performance and behaviours?

- Performance trends will be made available on a regular basis, subject to any GDPR constraints. MIB are working with MoJ to understand data / MI requirements.

#### c) Will the service be able to tell if a CMC is involved during the identification verification check?

- The portal is designed with ID & verification measures in place to check that the person entering data is the claimant. Where contact details are updated following initial submission, compensators will be made aware of this and can see new contact details to check whether these are being routed to a CMC. The MOJ and MIB are also looking at the possibility of tracking IP addresses to alert insurers if multiple claims are being made from single locations.

#### d) What happens if a compensator consistently raises suspicion about claims?

- We are working with industry stakeholders via a fraud workshop held in July (with follow-ups to be planned) to work through the roles and responsibilities of the industry, and approach/outcomes associated with fraud identification and management.

#### e) Will organisations front as unrepresented claimants to take advantage of services not available to professionals? (Stuart Hanley, Minster Law)

- This risk will be managed through the design, including two-factor authentication for unrepresented claimants.



### 3.6 Other

a) Child / protected parties are excluded from this service, but will the whiplash tariff apply?

- MoJ will look at this very carefully and this will be picked up outside of this session.

b) When will we know the small claims limit for vulnerable road users?

- MoJ is considering this now. It will all be set as part of the package of reform when that is implemented.

c) Do you believe our court fees are reasonably affordable?

- Court fees have been tested against recent unemployment tribunal Supreme Court case.

d) How will the claimant's information within the service be used as evidence in litigated cases?

- Claim data is stored once the claim notification has been submitted and is retained.
- Subsequent data provided in messages is also available.