

PI in the sky

8 September 2006

By [Kerry Underwood](#)

Insurance companies cannot be allowed to take over control of the claims management system, says Kerry Underwood

English claimant personal injury solicitors justifiably think that, along with their clients, they get a rough deal but, to look across the sea to Ireland is to view a bleakly futuristic scheme apparently designed by insurance companies and remarkable in a country which is a signatory to the European Convention on Human Rights and a member of the European Union.

The most striking provisions of the Irish Civil Liability and Courts Act 2004 relate to criminal sanctions for misleading one's own solicitor, with the maximum penalty being 10 years imprisonment and/or a fine of Euro 100,000. Section 25(2) provides:

"If ...a person gives, or dishonestly causes to be given, an instruction or information, in relation to a personal injuries action, to a solicitor, or person acting on behalf of a solicitor, or an expert, that

- is false or misleading in any material respect, and
- he or she knows to be false or misleading,

he or she shall be guilty of an offence".

Thus a criminal offence may be committed in relation to information given to one's own solicitor, even if it never gets any further, is never communicated to the other side or the court and never forms part of the claim.

Whither professional privilege? It makes the Money Laundering Regulations look positively mild!

How about 10 years inside for directors of insurance companies who cause to be sent those standard letters denying everything even when there is no conceivable defence? How about a permanent injunction against Colossus – the very definition of Orwellian double speak – a piece of software which appears to have a programme consisting of the instruction "Assess the correct level of damages and then remove a nought". How about solitary confinement for cost monkeys and their under offers on costs or minimum mandatory terms of imprisonment for any defence solicitor or insurance company who knowingly offers less than the correct success fee, or raises invalid challenges to conditional fee agreements, or fixed costs?

In fairness, even this government is unlikely to consider such legislation in England and Wales – after all the supermarkets who will be running the system would never allow it – but some of the other changes in Ireland may attract more support.

The limitation period has been reduced from three years to two years (good idea – make it one year here). A letter of claim must be sent to the alleged wrongdoer within two months of the cause of action arising.

All claims must go through the Personal Injury Assessment Board (PIAB), a statutory body set up by the Personal Injuries Assessment Board Act 2003, which provides both parties with a valuation for all personal injury claims not being contested on the merits and that do not involve medical negligence. If the parties accept the valuation then that is that. If not then authority is given for the case to go to court. Even if the claim is being contested it has to go to the PIAB first for authority for the matter to go to court, so no claim can proceed to formal legal proceedings without clearance from the PIAB. In cases contested on liability the PIAB will not provide a valuation.

The costs of presenting the case to the PIAB, which is mandatory, are met by the plaintiff, that is the costs are not recoverable from the other side and thus an injured party utilizing lawyers pays for them out of his or her own pocket. Initially the PIAB refused to deal with lawyers at all but this policy has been successfully challenged with the Irish courts holding that the PIAB cannot refuse to deal with lawyers. If the matter goes to court then costs are recoverable, but not in relation to work done in respect of the PIAB.

Once proceedings have been issued the claimant must swear an affidavit verifying the pleadings.

Section 17 of the Act makes it mandatory for both parties to make formal offers of settlement to each other, although in the defendant's case that 'offer' may be zero. As with existing rules relating to offers of settlement and payments into court, which are supplemented by rather than replaced by the new rules, the formal offers are lodged in court but not communicated to the trial judge until the case is over and costs are being dealt with.

There is also established a Book of Quantum containing PIAB awards and settlements and which is to act as a guide for the courts, although they are still free to exercise their own discretion (section 22).

However the whole purpose of the new procedures is to reduce claims and costs. In introducing the legislation the Minister for Justice said:

“In a very real way, the Act tackles the “compensation culture” which has developed in this country”.

It is thought that the PIAB will try to reduce the level of awards in order to make the whole process acceptable to the insurers, who have the financial power and

strength to wreck the scheme by not accepting the settlements. Individual claimants, deprived of costs when dealing with the PIAB, have no such power.

The insurance companies who have succeeded in getting this draconian measure through are the self-same ones operating in the United Kingdom. What has happened in Ireland should act as a stark warning to everyone in this country concerned with access to justice and equality before the law.

- What do you think? Post your comments on our forum at www.solicitorsjournal.com

Kerry Underwood is senior partner in Underwoods