Community Housing Cymru update

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New EL/PL claims procedure

From 1 August 2013

Fast track claims – EL/PL claims between £10k and £25k issued pre-1 April 2013 handled outside the portal (old procedure)

- Recoverable success fee and ATE premium if CFA/ATE entered into prior to 1 April 2013 but no 10% increase in PSLA damages. Exception for mesothelioma cases where the additional 10% is recoverable if judgment is on or after 1/4/2013, even if a pre-1/4/2013 CFA with a success fee is in place.

- In claims where no CFA allowing recovery of a success fee an additional 10% PSLA damages will apply if judgment given on or after 1 April 2013.

- No increased Part 36 benefits if claimant made offer before 1 April 2013 but benefits apply to such offers made post 1 April 2013. We have seen Claimants withdrawing/re-issuing previous offers.

- No benefit of QOCS if pre 1 April 2013 CFA with success fee, ATE or membership funding arrangement in existence. QOCS will apply after 1 April 2013, with retrospective effect, if none of those arrangements in place.

- Existing costs regime continues to apply, together with existing rule on proportionality.

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Fast Track claims – EL/PL £10k-£25k commenced post 1 April 2013 and pre 1 August 2013 handled outside the portal.

- No recoverable success fee or ATE premium if CFA/ATE entered into post 1 April 2013 – 10% increase in PSLA if no pre 1 April 2013 CFA with recoverable success fee.
- Recoverable success fees and ATE premiums continue in mesothelioma claims with post 1 April 2013 CFA. Claimants also receive additional 10% in PSLA damages.
- QOCS applies if no pre 1 April 2013 CFA with success fee, ATE or membership funding arrangement.
- Existing costs regime continues to apply subject to new test of proportionality (on the basis that "*cases commenced" in the transitional arrangements means the commencement of proceedings) with the old test applicable to work done before 1/4/2013.*
- New Part 36 benefits apply if claimant's offer made post 1 April 2013

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EL/PL Protocol - From 1 August 2013

- Claims Notification Form received via Portal
- Defendant acknowledges within 1 day
- Investigate/Liability response :
  Employers' Liability 30 days (6 weeks)
  Public Liability 40 days (8 weeks)
- Denial / contributory negligence alleged – Leaves Portal
- Medical evidence as RTA portal
- Employers liability: Defendant to provide earnings details within 20 days of admission.

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From 1 August 2013 – EL and PL £10k-£25k

- Claims arising from accidents occurring after 1 August 2013 will be handled through the portal.
- If a disease claim – if no letter of claim sent before 1 August 2013 will be handled through the portal, unless multiple defendants.
- New FRC will apply under the portal. Recoverable success fees and ATE premiums continue for mesothelioma claims.
- Claims based on accidents before 1 August 2013 will continue as:
  - No recoverable success fee where CFA entered into post 1 April 2013
  - Mesothelioma will still recover success fee, ATE premium and 10% damages uplift
  - QOCS will apply where CFA entered into post 1 April 2013
  - Existing costs regime applies, subject to proportionality
  - New part 36 Benefits apply to offers post 1 April 2013.

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EL/PL claims dropping out of the portal

- New FRC for claims dropping out of the portal will apply to EL/PL claims (except disease) over £10k commenced within the portal after 1 August 2013 - i.e. based on accidents after 1August only.

- For disease claims dropping out of the portal the new FRC will not apply and they will continue to be handled under the current costs regime.

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Fixed Costs under the Portal

	Claims of £1k-£10k Stage 1	Stage 2	Total	Claims of £10k-£25k Stage 1	Stage 2	Total
RTA claims	£200	£300	£500	£200	£600	£800
EL/PL claims	£300	£600	£900	£300	£1,300	£1,600

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Fixed Recoverable costs for cases falling out of the portal

Pre issue £1,000 - £5,000	Pre Issue £5,001 - £10,000	Pre Issue £10,001 - £25,000	Issued – Post issue Pre Allocation	Issued – Post allocation pre listing	Issued – Post listing pre trial	Trial - Advocacy Fee
Employers' Liability						
£950 + 17.5% of Damages	£1,855 +12.5% of Damages over £5k	£2,500 + 10% of Damages over £10k	£2,630 + 20% of Damages	£3,350 + 25% of Damages	£4,280 + 30% of Damages	£485 (to £3,000) £690 (£3-10,000) £1,035 (£10-15,000) £1,650 (£15,000+)
Public Liability						
£950 + 17.5% of Damages	£1,855 +10% of Damages over £5k	£2,370 + 10% of Damages over £10k	£2,450 + 17.5% of Damages	£3,065 + 22.5% of Damages	£3,790 + 27.5% of Damages	£485 (to £3,000) £690 (£3-10,000) £1,035 (£10-15,000) £1,650 (£15,000+)

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General issues

- It will be possible for claimants to enter into Damages Based Agreements to fund civil litigation claims at any time after 1 April 2013.

- QOCS will apply to the enforcement of any order after 1 April 2013 where the claimant has none of the following “pre commencement funding arrangements”:
  - a CFA or CCFA on which a success fee is to be recovered under LASPO Sec 44.6;
  - an ATE policy entered into before 1 April 2013;
  - a membership organisation funding arrangement entered into before 1 April 2013.

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The effect of the reforms

- claimant's solicitors will have ensured that their current and potential future clients will have funding arrangements in place prior to 1 April 2013 to secure recovery of success fees and ATE premiums
- claimants will also have issued claims in the court prior to 1 April 2013 to avoid the proportionality tests.
- Disease claims will remain on the current cost regime, pending further consideration

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Legislation Update

Section 69 of the Enterprise and Regulatory Reform Act 2013

Why change?

- Government identified issues:
  - Burden of excessive health and safety rules and regulations too great
  - Compensation culture damaging innovation and growth

- Goals:
  - Protect people in the workplace
  - Reduce the burden of unnecessary health and safety rules/regulations
  - Take a lighter touch approach to health and safety at work
  - Concentrate efforts on higher risk industries and serious breaches of the rules

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Action

- Government commissioned Professor Löfstedt to review and simplify health and safety law
- Professor Löfstedt's report sets out a number of recommendations that will:
  - reduce legal requirements on business that do not lead to improvements in health and safety
  - remove pressures on business to go beyond what the law requires, enabling them to reclaim ownership of the management of health and safety
- In particular he recommended:
  - strict liability should be qualified or, where necessary, replaced by "reasonably practicable"

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Government response

- Section 69 of the Enterprise and Regulatory Reform Act 2013; has
- amended Section 47 of the Health and Safety at Work Act 1974; by
- removing any civil liability arising from a breach of the Health and Safety at Work Act 1974; from
- 1 October 2013.

NOTE

- This does not remove an individual's right to bring a claim;
- any claim must now show that a negligent act led to the injury.

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What changes?

- Example:
- Regulation 5 of Provision and use of Work of Equipment Regulations
- Accidents prior to 1 October 2013 (old rules)
- Consider *Stark v Post Office [2000]*
  - Post office liable due to defect
  - Post Office had done all they could i.e. good repair and maintenance regime
  - Liable as the defect led to injury, direct breach of Regulation 5

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What changes…

- Consider:
- '*Stark*' following 1 October 2013 (new rules)
  - Can no longer rely upon breach of regulation 5 to bring a civil claim
  - Claim can still be brought in negligence; therefore;
    - Claimant must show that his employer was negligent; and
    - The negligence led to the injury
  - Post Office had a proactive system of repair and maintenance
  - Training not an issue
  - No external cause of the accident
- Different result?

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Health and Safety more bark than bite?

- A change too far?
- Remember:
  - An individual can still bring a claim, in negligence
  - Employers still have to show a good health and safety regime
  - Criminal sanctions still apply for serious breaches

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Common law duties

- Every employer's common law duty
  - Safe place of work
  - Safe system of work
  - Ensure safe system is followed
  - Safe plant and equipment
  - Competent staff

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Proving negligence

- In order to be successful claimants will have to prove negligence
- How?
- Claimants can refer to the ‘breach’ as evidence of negligence
- Expert evidence; consider
  - Likelihood of injury
  - Potential seriousness of outcome
  - Proportionality
  - Size of employer

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Two tier system?

- In principle, an employee of an ‘emanation of the state’ (e.g. one employed by a local authority) can bring a claim for a breach of the relevant European Directive.
- He/she need only show a breach of the European Directive to establish liability against his/her employer, (similar to old rules?).
- It follows that for the exactly the same breach, depending on who is the claimant’s employer, there can be two very different results. This appears to create a two tier legal system.
- How the courts will deal with this oddity remains to be seen.

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Thank you

Any questions?