

Evolution of the Claims Process – Loss of Earnings Claims

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Introduction

- Overview of current position on LOE claims and how this may change post reforms
- Relates to LOE claims in current portal. Situation with regards to LOE claims on multi-track matters should not change materially
- Technically no change in:
 - what is claimable
 - basis of the claim
 - method of calculation
 - requirement to evidence and substantiate
- Still an important head of claim in the context of overall damages and a key variable head of claim (i.e. not based on a matrix)

Current Position (1)

- Since current portal incepted, due to cost recovery position, Claimants have had to formulate their own LOE claims
- Costs recovery of an accountants disbursement only in limited / exceptional circumstances (particular feature of dispute...)
- Defendants have been in a position to either consider internally or appoint their own preferred Forensic Accountant to consider and, therefore, apply a skill set for the most part not available to Claimants.

Our Insight based on Insurer work

- High % of Claimants represented (c85%)
- Small % of Direct Claimants (c15%)

Current Position (2)

- Represented Claimants:
 - Continued challenges around presentation of LOE by Claimant's representatives
 - In period since current portal incepted move from presentation to information provision
 - Potentially reducing skill set in the market (created by reduced recoverable costs and / or commoditisation)
 - General overstatement in LOE claims has increased gradually year on year and, therefore, the potential for leakage in LOE element of claim
 - Rigour in LOE claims driven by Insurers

Current Position (3)

- Direct Claimants
 - Very few attempts at quantification
 - Presentation based on what they think should be claimable. Obvious lack of knowledge on what is legally claimable.
 - Where there is an attempt at quantification, almost invariably a significant overstatement
 - Lengthy process to obtain substantiating information to quantify
 - Lengthy dialogue post quantification to explain conclusions and argue the point(s)

Future Position (1)

- Future claims volumes unknown, therefore, future volumes of LOE claims unknown

- Three scenarios for those making claims:
 - a) Represented : Solicitor
 - b) Represented : Claims Management Company ('CMC')
 - c) Unrepresented

Future Position (2)

Represented : Solicitor

- Claimant Solicitors will wrestle with presentation in an ever more lean cost environment
- Potential adoption of technology to assist in the calculations but will still need to identify correct basis documentation
- Solicitors will still try to do this because of their professional obligations
- Nonetheless, probable potential for increased overstatement
- Insurers will need robust consideration process to avoid additional leakage
- LOE important head of claim in overall picture

Future Position (3)

Represented : CMC's

- CMC's will wrestle with presentation, as for Solicitors (perhaps adopting technology)
- Unscrupulous element may seek to try optimise claims, through LOE claim route, because it is a variable head of claim
- Potential for mis-statement (and leakage) greater?
- Insurers will need robust consideration process to avoid additional leakage

Future Position (4)

Unrepresented

- Arguable whether this will increase or not (e.g. PPI)
- Potentially good news for Insurers, as they get to control LOE claims (i.e. avoid leakage)
- Will need to ensure that Claimants are treated and compensated fairly
- Main issue will be time costs associated with treating Claimants fairly to avoid complaints

Future Position (5)

Collaboration

- Current driver for volume based Claimant representatives and Insurers is minimising file touches pre settlement.
- Efficiency and reducing friction is the key
- LOE claims have traditionally been a significant point of friction
- Joint handling agreements the way forward?
- Based on agreed / trusted Expert
- Potentially eliminating all attrition
- Strategic -v- practicalities