PERSONAL INJURIES BAR ASSOCIATION

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PIBA response to the MOJ's consultation on "Dispute Resolution in England and Wales"

1. This response addresses the consultation titled **"Dispute Resolution in England and Wales"** dated 3 August 2021.

2. PIBA is the specialist bar association for over 1,000 barristers in England and Wales who practise in the field of personal injuries and clinical negligence.

3. PIBA provides a forum for discussion on matters of common concern and interest to its members; ascertains and represents the views of members on matters affecting their professional interests; and furthers the study, understanding and development of the law relating to personal injuries.

EXECUTIVE SUMMARY

4. In the personal injury context, ADR is not seen as "alternative" dispute resolution but is already appreciated by personal injury practitioners as being (and having for many years been) an integral part of the resolution of personal injury claims: this is evidenced by a statistical analysis of the numbers of personal injury claims that are settled without final resolution by a court, and the experience of PIBA's members in their day-to-day practices.

5. PIBA suggests that such is the embedded culture of ADR, supported by Protocols and sanctions already found within the CPR, that in the personal injury context no changes

to practice or procedure are warranted, and that – on the contrary – if such changes are made, they are likely to build costs and delay in dispute resolution, not reduce them.

PIBA RESPONSE

6. With over 1,000 members, PIBA has national reach with circuit representatives on its Executive Committee and includes both junior and senior barristers at all levels of call and experience, both as members and in its governance[1].

7. PIBA's members have significant day-to-day experience of ADR, it being a central part of personal injury practice, and already professionally and procedurally integrated into the resolution of personal injury cases.

8. For the statistical discussion that follows, see Appendix 1 for a summary, Appendix 2 for the Ministry of Justice's ("MOJ") FOI response dated 6.10.21 of personal injury claims issued and their resolution by track in 2019 (the last full year pre-Covid), and Appendix 3 for the number of personal injury cases registered to the Compensation Recovery Unit ("CRU") and settlements recorded by CRU.

9. The vast majority of personal injury claims are settled by negotiation prior to the issue of proceedings. During the 12 month period 1.4.19 to 31.3.20 CRU recorded that there were 854,948 personal injury settlements.[2] In 2019 there were 113,756 personal injury cases issued,[3] which is 13% of the 854,948 personal injury settlements recorded by CRU. Therefore, assuming that these are typical years, the overwhelming majority of personal injury cases resolve without proceedings having to be issued.

10. Of the small percentage of personal injury claims that progress to the issue of proceedings, in 2019 48% (54,548 cases) were resolved prior to the claim being allocated to a track i.e. the issue of proceedings of itself brought about settlement of the claim.[4]

[1] www.piba.org.uk/committee
[2] www.gov.uk/government/publications/compensation-recovery-unit-performance-data/compensation-recovery-unit-performance-data totalling the data for employer, motor, public and other liability, and not including clinical negligence or liability unknown cases
[3] a similar outcome is arrived at if the numbers of issued cases in 2019 (113,756) is compared with the numbers of cases registered by CRU between 1.4.19 and 31.3.20 (811,752) – the percentage is 14%
[4] MOJ FOI response dated 6.10.21 in relation to 2019

11. Of the 52% of issued personal injury cases that progressed to track allocation to the Small Claims track (623 cases), Fast-track (51,289 cases) and Multi-track (7,296 cases), only 21% of these cases were resolved at a final hearing, the rest having been resolved prior to trial. This constitutes 11% of the 113,756 total issued cases in this period.

12. Of Fast-track claims that were allocated, 77% of claims were resolved prior to trial. Of Multi-track claims that were allocated, 90% of claims were resolved prior to trial.

13. When the numbers of personal injury cases across all tracks that result in resolution at a trial in 2019 (12,667 cases) is compared with the number of personal injury settlements recorded by CRU between 1.4.19 to 31.3.20 (854,948 cases), it can be seen that the percentage that had not been resolved pre-trial is 1.5%. These statistics demonstrate that (approximately) 98.5% of personal injury claims by reference to CRU and the MOJ's figures are resolved without the need for a final trial or hearing.

14. It must be emphasised that the fact that some personal injury claims settle after issue but prior to trial is *not* evidence of a reluctance of parties or legal advisers to undertake ADR. It is more likely to be a consequence of the three year limitation period for personal injury claims, and the fact that in serious personal injury cases the prognosis is usually not known until 3 to 5 years post-accident.

15. For civil litigation generally and personal injury claims in particular, there are already real and effective incentives for the parties to participate in ADR. There is the Pre-Action Protocol for Personal Injury claims that provides for 'Settlement & ADR' at clse. 8, and sanctions for non-compliance at clse. 13 to 16. Compliance with the protocols, in our members' experience, is high and the sanctions are effective.

16. In lower value personal injury claims to which the 'Pre-Action Protocol for Low Value PI claims in RTAs', the 'Pre-Action Protocol for Low Value PI (Employer's Liability & Public Liability) Claims', and the 'Pre-Action Protocol for Low Value PI claims below the Small Claims Limit in RTAs' apply, the recoverable fees are so low (or are irrecoverable) that the Protocols provide a disincentive to delay resolution.

17. All court orders in personal injury claims allocated to the Fast and Multi-track include an order that the parties must consider settling litigation by any means of ADR including mediation[5] that is backed up by costs penalties for those refusing to participate in ADR.[6]

18. PIBA members' experience is that the requirement to consider settlement by any means of ADR is taken seriously. That is borne out by the statistical analysis referred to above. Settlement pre- and post-issue is achieved by various means including informal negotiation, offer and counteroffer, Part 36 offers, and Joint Settlement Meetings ("JSMs"), mediation and neutral evaluation.

19. CPR Part 36 provides powerful incentives for claimants to make realistic offers. The financial and costs benefits for claimants in the event that judgment is at least as advantageous as the claimant's offer are generous, and are conversely penal for a defendant.[7]

20. It is PIBA members' experience that where offer and counteroffer have not secured compromise, personal injury litigation can most economically and conveniently be settled by Joint Settlement Meeting ("JSM"). However, other forms of ADR can be useful: the added value of mediation usually being with multi-party actions, and neutral evaluation for specific circumstances where settlement cannot otherwise be achieved.

21. Court issue fees of 5% of the value of the claim (with a ceiling of £10,000), application fees, and hearing fees[8] provide a significant incentive for the parties to settle claims without the issue of proceedings.

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[5] "At all stages, the parties must consider settling litigation by any means of alternative dispute resolution (including mediation) any party not engaging in any such means proposed by another must serve a witness statement giving reasons within 21 days of that proposal, such witness statement must not be shown to the trial Judge until the question of costs arise"

[6] Halsey v Milton Keynes General Health NHS Trust [2004] EWCA Civ 576

[7] CPR r.36.17 inter alia up to 10% on damages, 10% uplift on damages up to £500,000 & 5% on sums in excess of figure to a limited of £75,000, costs on the indemnity basis and interest up to 10% on those costs

[8] EX 50 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1021895/EX50_web_0921.pdf

22. The funding of personal injury litigation is almost exclusively by way of Conditional Fee agreements between claimants and their legal advisers. Therefore, the significant disbursements incurred by claimants personally and/or by their legal advisers during the currency of claims to fund court fees, the instruction of experts and other costs provide an incentive to not delay bringing claims to a conclusion.

23. Claimants (the injured party) are central to settlement of claims, and the experience of PIBA's members is that injured claimants want their claims resolved as efficiently and as soon as is practicable for financial as well as mental health reasons. However, claimants also want their claims settled at full and fair value and consequently (usually) do not want their claims settled until the prognosis is known and the claim can be quantified fairly.

24. Defendants recognise that the longer claims are subject to dispute, litigation and court timetabling so costs build in the claim. This provides a significant incentive for defendants to settle claims early.

25. Defendants are further encouraged actively to pursue settlement options early-on on account of QOCS as defendants cannot enforce orders for costs against unsuccessful claimants save for the specific circumstances provided by CPR r.44.15 & 44.16. The decision in *Ho v Adelkum* [2021] UKSC 43 provides no opportunity for set-off of costs in a QOCS case and this provides an additional financial incentive for defendants to settle early.

26. In most personal injury litigation claimants and defendants are legally represented, the former usually on a CFA, and the latter supported by insurers. It is PIBA members' experience that insurers in personal injury litigation take a commercial view on settlement and are acutely aware - as the paying party - of the need for early resolution[9]. It is not our members' experience that there is an absence of procedural levers to secure resolution by ADR.

[9] PIBA comments that the same commercial approach is not widely seen where government departments are defendants.

27. However, for claimants and defendants the time at which claims can be settled is determined by when the final prognosis is known, and consequently is dependent on expert medical opinion. Unlike (e.g.) contractual claims where the scene is set and all facts are apparent at the outset, personal injury claims evolve over time as the claimant's injuries recover (or do not) and their long-term prognosis becomes apparent.

28. Further, in complex cases and those of any significant value or importance to the parties, settlement cannot be properly contemplated until non-medical expert evidence[10] is available to address issues relevant to the quantification of damages. However, usually it is not the obtaining of such evidence itself that causes delay, but the need to wait for recovery or the claimant's position to have plateaued before the prognosis can be known.

29. Consequently, it is not PIBA members' experience that there is an absence of procedural incentives or appetite for ADR, but the converse: whether claimant or defendant the incentive is to settle early, and what is holding back settlement is not a reluctance to pursue ADR, but the practical necessity for personal injury claims to only be settled once the prognosis is known and the claim can be quantified fairly.

30. Considering the high uptake of ADR in personal injury litigation, there is no evidence to support a more prescriptive approach than is in place currently. PIBA would caution against a more prescriptive approach, and its members are concerned that mandatory rules that remove the discretion of the parties to choose the right time for settlement will likely build costs, will lead to unfairness and will thereby be counter-productive.

31. PIBA reiterates Dyson LJ's (as he then was) statement in *Halsey v Milton Keynes* [2004] 1 WLR 3002 that:

> "... If the court were to compel parties to enter into a mediation to which they objected, that would achieve nothing except to add to the costs to be borne by the parties, possibly postpone the time when the court determines the dispute and damage the perceived effectiveness of the ADR process ..."

[10] Care & occupational therapy, employment, pension, accountancy etc.

32. Finally, PIBA observes that personal injury litigation, more than any other area of litigation, is subject to complex and interlocking rules and regulation, the majority of which have been in force for less than 10 years, and cover all aspects of personal injury practice and procedure,[11] the most recent of which have only been in force since 31.5.21.[12]

33. PIBA cautions against yet further procedural developments in circumstances where: (i) there is no evidence to suggest that there is an absence of use of ADR in personal injury claims; (ii) if enacted, further procedural reforms will inevitably affect all stakeholders in personal injury practice, whether claimant or defendant; and (iii) will unlikely beneficially assist lay claimants, defendants, or the insurers that represent them.

LIST OF ISSUES

ISSUE 1: Drivers of engagement and settlement

An understanding of the drivers of engagement and settlement will enable the development of policies and procedures that ensure access to justice in a way that best meets people's needs. Existing evidence points to reasonable settlement rates for pre-hearing dispute resolution schemes.

1. Do you have evidence of how the characteristics of parties and the type of dispute affect motivation and engagement to participate in dispute resolution processes?

34. The parties to personal injury claims are strongly motivated to engage, and do participate in, ADR and the foregoing is demonstrated by the numbers of cases that settle prior to issue, and the small percentage of Fast-track and Multi-track claims that have to be determined by trial, see Appendix 1.

35. The incentives to utilize ADR are set out above, and include the best interests of the claimant being to settle as early as is practicable, for funding reasons, and in

[11] Pre-Action Protocol For Personal Injury claims; Pre-Action Protocol for Low Value PI claims in RTAs (from 31.7.13); Pre-Action Protocol for Low Value PI (Employer's Liability & Public Liability) Claims (from 31.7.13); Pre-Action Protocol for Low Value PI claims below the Small Claims limit in RTAs (from 31.5.21); MedCo Portal (from 6.4.15); r.14.1A&B & pre-action admissions in personal injury claims; r.44.13 et seq & QOCs (from 1.4.13) and the Criminal Justice and Courts Act 2015, s.57 (from 13.4.15) Etc.

[12] Pre-Action Protocol for Low Value PI claims below the Small Claims limit in RTAs

consequence of Part 36 and costs considerations for defendants. However, when a claim can be settled is determined by the prognosis, and until there is sufficient certainty neither the claimant nor the defendant can quantify the claim or reliably identify settlement parameters.

2. Do you have any experience or evidence of the types of incentives that help motivate parties to participate in dispute resolution processes? Do you have evidence of what does not work?

36. See above on what, in PIBA's members' experience, does work.

37. On what does not work, or is not cost-effective or efficient:-

    a. Court orders imposing stays for the purposes of ADR without the agreement of the parties; these cause delay and build costs, and rarely result in effective settlement of personal injury claims.

    b. Court appointments for court-led mediation or ADR; these are unnecessary and cost-building considering it is PIBA members' experience that the parties to personal injury litigation are already strongly incentivised to settle by offer and counter offer, JSM, or other forms of ADR. PIBA would also observe that represented litigants are able to devote greater time to the details of a dispute than can reasonably be expected of a judge managing a busy list.

    c. Mediation & neutral evaluation where offer, counteroffer or JSM may more effectively and fairly result in settlement. In two-party litigation, the involvement of a third party mediator can on occasions obstruct settlement as they invariably know the case less well than the parties' legal advisers and consequently little value is added, but costs are increased. Neutral evaluation has its place in the lexicon of ADR but it should only be used in suitable specific scenarios.

3. Some evidence suggests that mandatory dispute resolution gateways, such as the Mediation Information & Assessment Meeting (MIAM), work well when they are part of the court process. Do you agree? Please provide evidence to support your response.

38. PIBA disagrees as courts cannot know as well as the parties when a claim is capable of settlement in fairness to the parties (as, for example, the prognosis may be unknown at an early stage and the expert evidence will take time to become sufficiently complete to permit settlement).

39. As no two personal injury claims are the same, the courts cannot timetable mediation as effectively as the parties can. Interference with the parties' autonomy to properly represent the interests of their clients - in circumstances where there is already a working culture of ADR - is likely counter-productively to build costs and cause delay, rather than enhance resolution.

40. Any prospective proposal for a mandatory dispute resolution gateway should reflect critically on the reasons why the mandatory telephone gateway introduced in 2013 for legal aid in education, debt recovery and discrimination cases was abandoned in 2020. The findings contained in the Public Law Project's 2015 report on the gateway indicate that these approaches do not facilitate access to justice.

4. Anecdotal evidence suggests that some mediators or those providing related services feel unable to refer parties to sources of support/information – such as the separated parents' information programme in the family jurisdiction – and this is a barrier to effective dispute resolution process. Do you agree? If so, should mediators be able to refer parties onto other sources of support or interventions? Please provide evidence to support your response.

41. In almost all Fast-track and Multi-track personal injury cases the parties are legally represented and, until the recent reforms, this was also the position in claims now covered by the Small Claims track[13]. Consequently, the need to refer parties to sources of support/information is not relevant to Fast-track and Multi-track personal injury litigation as the parties' legal representation are familiar with ADR and alternative means of dispute resolution.

[13] Pre-Action Protocol for Low Value PI claims below the Small Claims limit in RTAs in-force from 31.5.21

42. As regards those RTA personal injury claims that now find themselves in the Small Claims track after 31.5.21, these will include a large number of unrepresented claimants.

43. The experience of PIBA's members in areas of work where legal representation is low is that, regardless of sources of support or information, the numbers of contested cases at trial will *increase* not *decrease*.

44. This is a predictable outcome of the ill-advised policy decision to increase the small claims limit from £1,000 to £5,000 in RTA claims without provision for recovery of any legal costs, the implementation of which has been stated by informed commentators to be an *"utter mess"*[14].

5. Do you have evidence regarding the types of cases where uptake of dispute resolution is low, and the courts have turned out to be the most appropriate avenue for resolution in these cases?

45. The up-take of ADR in personal injury litigation is high, and it arises both pre-litigation and within litigation. The time at which it occurs, however, is case specific and is primarily due to matters outside of the control of the parties,[15] and not due to a reluctance to use ADR that is embedded in personal injury practice.

6. In your experience, at what points in the development of a dispute could extra support and information be targeted to incentivise a resolution outside of court? What type of dispute does your experience relate to?

46. PIBA members' experience is in personal injury litigation and its members are well acquainted with ADR, and are professionally obliged to act in the best interests of their clients in giving impartial and expert advice on how and when to settle claims.

47. PIBA's members and their professional and lay clients do not require extra support and information to incentivise resolution outside of court, as the procedural incentives

[14] Professor Dominic Regan of City Law School, New Law Journal 11.6.21
[15] the need to issue proceedings is determined by limitation & settlement by prognosis

already exist, and ADR is already strongly embedded in the culture and conduct of personal injury litigation.

7. Do you have any evidence about common misconceptions by parties involved in dispute resolution processes? Are there examples of how these can be mitigated?

48. No. ADR is well understood in personal injury litigation.

ISSUE 2: Quality and outcomes

We want to ensure that parties are supported to use the best processes. As well as measures such as engagement/settlement rates and the perceptions of parties, it is important that parties achieve quality outcomes i.e. problems can be resolved effectively, fairly, and with minimal cost and delay for parties.

8. Do you have evidence about whether dispute resolution processes can achieve better outcomes or not in comparison to those achieved through the courts?

49. PIBA's members and their professional clients support ADR in personal injury practice as resolution by agreement with the opposing party is in the best interests of their clients. However, it has to be recognized that not all cases are capable of settlement such as those where liability is disputed, dishonesty is alleged, or the claim is fundamentally dishonest.

50. ADR provides an opportunity for the parties to exchange a certainty for the uncertainty of court resolution at a trial on account of the unknowns and contingencies that inevitably arise at trial, the unpredictable presentation of lay and expert witnesses, and the variability of judicial determination of outcomes.

51. However, the court process, or a formal process of dispute resolution with directions for disclosure and the exchange of lay and expert evidence, is essential in order for claims that cannot be settled pre-limitation to be worked-up sufficiently for the parties to know and understand each other's position and circumstances to arise whereby ADR is likely to give rise to settlement, or in default for formal adjudication of the case.

9. Do you have evidence of where settlements reached in dispute resolution processes were more or less likely to fully resolve the problem and help avoid further problems in future?

52. No, as the means by which personal injury claims are resolved is not relevant to the occurrence of personal injury or its recurrence.

10. How can we assess the quality of case outcomes across different jurisdictions using dispute resolution mechanisms, by case types for example, and for the individuals and organisations involved?

53. In the personal injury context this is not possible as each case is unique and grounded on its own facts and circumstances.

11. What would increase the take up of dispute resolution processes? What impact would a greater degree of compulsion to resolve disputes outside court have? Please provide evidence to support your view.

54. A greater degree of compulsion to resolve personal injury disputes outside court would emphatically *not* increase the up-take of ADR as the means by which personal injury claims are finally resolved, as ADR is already firmly entrenched in personal injury practice in claims to which it is suited.

55. If the process was to be undertaken outside the court process, the only difference would be that an identical process would necessarily have to replicate the court process for disclosure, the exchange of lay and expert evidence, and adjudication in the event that ADR was unsuccessful.

56. PIBA questions the purpose of this outcome, and whether it would be in the public interest for a parallel system of justice and it would not be cost-efficient.

57. Certainly, driving personal injury claims into a parallel system will deprive judges at all levels from gaining experience and skills in adjudicating personal injury claims, and reduce fee income to the detriment of civil justice overall.[16]

[16] it is understood that the revenue from fees from non-matrimonial Civil Justice (remarkably) exceeds the costs of judicial time, the administration & infrastructure of these courts

12. Do you have evidence of how unrepresented parties are affected in dispute resolution processes such as mediation and conciliation?

58. In almost all Fast-track and Multi-track personal injury cases the parties are legally represented, and until the recent reforms this applied to claims now covered by the Small Claims track. This question is consequently not relevant to Fast-track and Multi-track personal injury claims.

59. With regard to those RTA personal injury claims now covered by the Small Claims track, unrepresented claimants will have neither the skills nor experience to achieve fair outcomes at mediation or conciliation, and there will be an inequality of arms contrary to the Overriding Objective at CPR r.1.

60. However, if the processes of mediation and conciliation are imposed, unrepresented claimants will be disadvantaged in comparison to represented defendants, as PIBA warned in its response to the consultation extending the scope of the Small Claims track.[17]

13. Do you have evidence of negative impacts or unintended consequences associated with dispute resolution schemes? Do you have evidence of how they were mitigated and how?

61. Portsmouth and Southampton County Courts have a system of court-ordered mediation at or about the time of a PTR. This is at about the same time as the parties would likely otherwise have a JSM which, if successful, would obviate the need for a PTR. The outcome has therefore been to build costs without materially increasing the rate of settlement.

62. Courts on the South-Eastern circuit have listed large numbers of cases before the same judge on the same day and significantly in excess of the capacity of the court resulting in chaotic scenes for counsel, solicitors and lay clients alike without materially increasing the rate of settlement or being usefully progressive of the litigation.

[17] PIBA response to the consultation Reforming the Soft Tissue Injury ('whiplash') Claims Process dated 4.1.17

14. Do you have evidence of how frequently dispute resolution settlements are complied with, or not? In situations where the agreement was not complied with, how was that resolved?

63. As almost all personal injury claims are against insured defendants and both parties are legally represented, it is rare for there to be non-compliance with settlement agreements that are usually drafted by specialist personal injury solicitors or counsel.

64. If parties are unrepresented, it is likely that disputes over dispute resolution settlements will arise which could result in satellite litigation.

15. Do you have any summary of management information or other (anonymised) data you would be willing to share about your dispute resolution processes and outcomes? This could cover volumes of appointments and settlements, client groups, types of dispute, and outcomes. If yes, please provide details of what you have available and we may follow up with you.

65. No. Our responses are based on the wide claimant and defendant experience at all levels of seniority of the authors of this response and those consulted about it.

ISSUE 3: Dispute resolution service providers

We are keen to gain a greater understanding of the Dispute Resolution workforce and how they are currently trained, how standards of work are monitored and how quality is assured to users of their services.

16. Do you have evidence which demonstrates whether the standards needed to provide effective dispute resolution services are well understood?

66. No. Amongst personal injury practitioners the purpose and means by which cases may be resolved by ADR are well understood.

17. Do you have evidence of the impact of the standard of qualifications and training of dispute resolution service providers on settlement rates/outcomes?

67. No. The parties in personal injury litigation are usually legally represented and their legal representation are experienced in ADR and do not require 'dispute resolution service providers'.

18. Do you have evidence of how complaints procedure frameworks for mediators and other dispute resolution service providers are applied? Do you have evidence of the effectiveness of the complaints' procedure frameworks?

68. No, and see the answer to Question 17.

19. Do you think there are the necessary safeguards in place for parties (e.g. where there has been professional misconduct) in their engagement with dispute resolution services?

69. In the personal injury field, those representing the parties at JSMs, mediators and those involved in early neutral evaluation are invariably barristers or solicitors and consequently are bound by the obligations of their profession.

70. It would be ill-advised for there to be proposals by which unregulated persons are permitted to be 'dispute resolution service providers'. A minimum qualification in the context of personal injury practice would be a solicitor or barrister experienced in personal injury practice (who would thereby be subject to proper ethical and professional regulation and oversight).

20. What role is there for continuing professional development for mediators or those providing related services and should this be standardised?

71. Yes. However, if the minimum qualification in the context of personal injury practice was a solicitor or barrister experienced in personal injury practice any additional levels of CPD are unnecessary.

21. Do you have evidence to demonstrate whether the current system is transparent enough to enable parties to make informed choices about the type of service and provider that is right for them?

72. No.

ISSUE 4: Financial and economic costs/benefits of dispute resolution systems

We are keen to get more evidence around the possible savings of dispute resolution processes. We seek evidence to help us understand the economic differences between dispute resolution processes.

22. What are the usual charges for parties seeking private dispute resolution approaches? How does this differ by case types?

73. None known as not within PIBA members' experience.

23. Do you have evidence on the type of fee exemptions that different dispute resolution professionals apply?

74. None known as not within PIBA members' experience.

24. Do you have evidence on the impact of the level of fees charged for the resolution process?

75. None known as not within PIBA members' experience.

25. Do you have any data on evaluation of the cost-effectiveness or otherwise of dispute resolution processes demonstrating savings for parties versus litigation?

76. None known as not within PIBA members' experience.

ISSUE 5: Technology infrastructure

We are interested to learn what evidence informs the potential for technology to play a larger role in accessing dispute resolution.

Although we are aware of many domestic and international platforms, we must continue learning from new and novel approaches to digital technology that can remove barriers to uptake, improve the user experience, reduce bureaucracy and costs, and ultimately improve outcomes for parties.

26. Do you have evidence of how and to what extent technology has played an effective role in dispute resolution processes for citizens or businesses?

77. PIBA members have had historical experience of insurers who have used computer programmes to attempt to quantify the value of damages in lower value cases, and the unreliability of outcomes was such that, on the contrary, it reduced the acceptance of claimant offers and increased the number of contested trials.

78. PIBA queries how technology has a part to play in evaluating the individual circumstances of personal injury claims considering the complexity of the issues

raised, the importance of medical expert evidence on diagnosis, causation and prognosis, and the evaluative judgments required in relation to the totality of the evidence for each individual case.

79. PIBA is concerned by the proposition that a 'machine' would interpose its assessment of liability, contributory negligence and quantum in personal injury cases in circumstances where personal injury claims are individual and of significant life-time importance to claimants and, on account of their monetary value, similarly so to defendants, and their insurers.

80. PIBA are opposed in principle to 'machine' adjudication in personal injury claims and such would be contrary to a claimant's and a defendant's Article 6 right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

81. PIBA has no objection to making the system of civil justice more efficient by the use of technology. The present administration and file handling of civil justice at County Court level has barely progressed during the computer age and is an embarrassment. The same can be said for the majority of the court estate, not least the Royal Courts of Justice: many courts in the RCJ have barely changed since Victorian times.

82. If scarce resources from public funds are to be expended on technology, they would be better applied to the deployment of a file sharing platform and administration portal for all civil cases, rather than focusing on the adjudication of final outcomes. PIBA is concerned that publicly funded 'grand projects' in technology have a troubled history and so would discourage the MOJ from going down this route.

27. Do you have evidence on the relative effectiveness of different technologies to facilitate dispute resolution? What works well for different types of disputes?

83. No but see the response to Question 26.

28. Do you have evidence of how technology has caused barriers in resolving disputes?

84. No but see the response to Question 26.

29. Do you have evidence of how an online dispute resolution platform has been developed to continue to keep pace with technological advancement?

85. No but see the response to Question 26.

30. Do you have evidence of how automated dispute resolution interventions such as artificial intelligence-led have been successfully implemented? How have these been reviewed and evaluated?

86. No but see the response to Question 26.

ISSUE 6: Public Sector Equality Duty

We are required by the Public Sector Equality Duty to consider the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people in shaping policy, delivering services and in relation to our own employees.

31. Do you have any evidence on how protected characteristics and socio-demographic differences impact upon interactions with dispute resolution processes?

87. Yes. PIBA's members represent claimants and defendants from all socio-economic, disability, gender and ethnic backgrounds and all others with protected characteristics found within the jurisdiction. This is only possible in circumstances where there is access to justice and a system of fair adjudication of disputes that cannot otherwise be settled by agreement.

88. Access to justice by personal injury claimants in Fast-track and Multi-track claims is currently only possible due to claimant solicitors and counsel doing so on a CFA basis. PIBA would caution against any significant changes that could affect the funding of personal injury claims, and the consequent inability of claimants to access justice.

89. Historically, the effect of change in the civil justice field has resulted in unintended consequences and consequently PIBA would express the need to take caution in developing significant departures from current practice and procedure.

32. Do you have any evidence on issues associated with population-level differences, experiences and inequalities that should be taken into consideration?

90. Yes and see the answer to Question 31.

ISSUE 7: Additional evidence

Please share additional evidence in relation to dispute resolution, not covered by the questions above, that you would like to be considered as part of this Call for Evidence.

91. PIBA have nothing further to add.

Steven Snowden QC, Chair of the Personal Injuries Bar Association

Charles Bagot QC, Vice-Chair of the Personal Injuries Bar Association

John Meredith-Hardy, Shahram Sharghy, Matthew Brunning

(Executive Committee members of the Personal Injury Bar Association)

27th October 2021

APPENDIX 1

1 **Numbers of personal injury cases heard at a final hearing as a percentage of CRU cases registered / settled**

	CRU	cases at a final hearing	percentage to a final hearing
2019/20 registered	811,752.00	12,667.00	1.56%
2019/20 recorded settlements	854,948.00	12,667.00	1.48%

2 **Numbers of personal injury cases issued as a percentage of CRU cases registered / settled**

	CRU	issued	percentage issued
2019/20 registered	811,752.00	113,756.00	14.01%
2019/20 recorded settlements	854,948.00	113,756.00	13.31%

3 **Percentages of issued personal injury cases tracked & determined at a final hearing**

year	issued	tracked	percentage tracked	final hearing	percentage final hearing	
					of issued	of tracked
2019	113,756.00	59,208.00	52.05%	12,667.00	11.14%	21.39%

4 **Percentages of tracked personal injury cases determined at a final hearing**

	tracked	final hearing	percentage resolved at a final hearing	percentage settled before a final hearing
small claims	623.00	225.00	36.12%	63.88%
fast track	51,289.00	11,726.00	22.86%	77.14%
multi track	7,296.00	716.00	9.81%	90.19%

5 **Numbers of personal injury cases issued & settled prior to being tracked**

issued	tracked	cases settled before bing tracked
113,756.00	59,208.00	54,548.00

6 **Numbers of personal injury cases used for analysis taken from CRU statistics**

	employer	motor	public	other	total
2019/20 registered	79,027.00	653,052.00	72,587.00	7,086.00	811,752.00
2019/20 recorded settlements	90,219.00	671,895.00	83,511.00	9,323.00	854,948.00

APPENDIX 2

Ministry of Justice

Disclosure Team
Ministry of Justice
102 Petty France
London
SW1H 9AJ

data.access@justice.gov.uk

John Meredith Hardy
john@meredithhardy.co.uk

6th October 2021

Dear Mr Hardy,

Freedom of Information Act (FOIA) Request – 210909043

Thank you for your request received on 9th September 2021 in which you asked for the following information from the Ministry of Justice (MoJ):

Statistics for 2019:-
- number of personal injury small claims track cases that are issued
- number of personal injury small claims track cases that are resolved after a trial
- number of personal injury fast track cases that are issued
- number of personal injury fast track cases that are resolved after a trial
- number of personal injury multi-track cases that are issued
- number of personal injury multi-track cases that are resolved after a trial.

Your request has been handled under the FOIA. It has been answered by Her Majesty's Courts and Tribunals Service (HMCTS) on behalf of MoJ.

I can confirm that Civil claims involving Personal Injury are not allocated to a 'track' when they are issued, instead the allocation happens at a later stage in the process. It is also worth noting that a number of Personal Injury cases do not proceed past the 'issue' stage.

In the year 2019 there were a total of 113,756 Personal Injury claims issued, however, of these only 59,208 were allocated to a 'track' and only 12,667 went to a full hearing (trial). Within that please find below the breakdown of that data.

	Small Claims	Fast Track	Multi Track
Personal Injury cases allocated	623	51,289	7,296
Personal Injury full hearings	225	11,726	716

Notes regarding the above data

1. Data are taken from a live management information system and can change over time.
2. Data are management information and are not subject to the same level of checks as

official statistics.

3. The data provided is the most recent available and for that reason might differ slightly from any previously published information.
4. Data has not been cross referenced with case files.
5. Although care is taken when processing and analysing the data, the details are subject to inaccuracies inherent in any large-scale case management system and is the best data that is available.

Appeal Rights

If you are not satisfied with this response you have the right to request an internal review by responding in writing to one of the addresses below within two months of the date of this response.

data.access@justice.gov.uk

Disclosure Team, Ministry of Justice

You do have the right to ask the Information Commissioner's Office (ICO) to investigate any aspect of your complaint. However, please note that the ICO is likely to expect internal complaints procedures to have been exhausted before beginning their investigation.

Yours sincerely

Jennifer Mackinnon
Analysis and Performance Division, Her Majesty's Courts and Tribunals Service (HMCTS).

Transparency data

Compensation Recovery Unit performance data

Updated 2 July 2021

Contents

The data for each year runs from 1 April to 31 March.

Number of cases registered to CRU

Year	Clinical negligence	Employer	Motor	Other	Public	Liability not known	Total
2020 to 2021	14,485	45,687	446,976	4,577	51,286	1,348	564,359
2019 to 2020	15,845	79,027	653,052	7,086	72,587	1,655	829,252
2018 to 2019	16,809	89,461	660,608	7,614	85,472	2,392	862,356
2017 to 2018	17,400	69,230	650,019	19,172	96,067	1,727	853,615
2016 to 2017	17,894	73,355	780,324	20,047	85,504	1,692	978,816
2015 to 2016	17,895	86,495	770,791	11,388	92,709	2,046	981,324
2014 to 2015	18,258	103,401	761,878	12,972	100,072	1,778	998,359
2013 to 2014	18,499	105,291	772,843	14,467	103,578	2,123	1,016,801
2012 to 2013	16,006	91,115	818,334	17,695	102,984	2,175	1,048,309
2011 to 2012	13,517	87,350	828,489	4,435	104,863	2,496	1,041,150
2010 to 2011	13,022	81,470	790,999	3,855	94,872	3,163	987,381

Settlements recorded by CRU

Year	Clinical negligence	Employer	Motor	Other	Public	Liability not known	Total
2020 to 2021	16,299	68,086	550,338	9,108	71,195	749	715,775
2019 to 2020	18,721	90,219	671,895	9,323	83,511	644	874,313
2018 to 2019	17,824	83,046	654,810	12,536	84,513	530	853,259
2017 to 2018	18,430	83,528	683,329	17,085	91,706	485	894,563
2016 to 2017	18,449	133,934	755,366	13,194	92,042	505	1,013,490
2015 to 2016	19,620	99,329	732,788	11,625	100,085	324	963,771
2014 to 2015	17,299	97,097	751,437	12,996	111,555	436	990,820
2013 to 2014	15,052	96,320	808,016	14,141	115,044	444	1,049,017
2012 to 2013	12,955	90,189	786,587	9,584	109,906	496	1,009,717
2011 to 2012	12,409	89,888	754,159	4,122	100,715	624	961,917
2010 to 2011	10,813	98,586	659,671	3,463	93,220	727	866,480

Recoveries made by CRU

Year	Clinical negligence	Employer	Motor	Other	Public	Liability not known	Total
2020 to 2021	£20.127 million	£64.497 million	£36.151 million	£1.261 million	£7.707 million	£0.076 million	£129.820 million
2019 to 2020	£14.084 million	£66.835 million	£31.732 million	£1.340 million	£6.641 million	£0.010 million	£120.642 million

2018 to 2019	£17.612 million	£63.717 million	£29.803 million	£1.631 million	£7.186 million	£0.010 million	£119.959 million
2017 to 2018	£18,466,404.68	£67,745,014.91	£29,563,561.43	£1,393,013.54	£6,352,690.96	£59,823.54	£123,580,509.06
2016 to 2017	£18,127,873.28	£68,824,913.42	£30,063,642.68	£1,350,643.56	£7,621,284.35	£38,017.81	£126,026,375.10
2015 to 2016	£15,628,754.03	£69,766,631.33	£31,261,593.92	£1,112,025.06	£7,921,893.96	£67,776.73	£125,758,675.03
2014 to 2015	£14,043,706.35	£73,719,340.95	£32,280,370.93	£1,137,645.58	£8,510,389.92	£28,726.62	£129,720,180.35
2013 to 2014	£12,959,073.92	£74,417,163.07	£36,056,513.55	£1,057,788.86	£9,828,792.82	£118,179.85	£134,437,512.07
2012 to 2013	£14,756,267.61	£71,336,357.06	£36,165,277.90	£1,009,172.47	£9,614,093.86	£54,175.86	£132,935,344.76
2011 to 2012	£13,851,502.19	£75,245,271.28	£38,120,831.98	£946,957.54	£10,459,138.84	£76,062.31	£138,699,764.14
2010 to 2011	£11,355,690.97	£75,834,759.13	£41,072,611.98	£909,794.54	£10,606,832.81	£68,343.40	£139,848,032.83