

Costs talk to continue despite Apil snub

THE Association of Personal Injury Lawyers' decision to withdraw from mediation on fixed costs will not lead to the discussions collapsing, stakeholders have claimed.

Apil is the first party to withdraw from the talks, which began on 2 September and form part of Lord Jackson's review of civil litigation costs.

Post understands that stakeholders the Law Society, the Forum of Insurance Lawyers, the Motor Accident Solicitors Society and the Association of British Insurers will not follow Apil's move.

The mediation, which also involves the Civil Justice Council and Sir Rupert

Jackson, is seeking to establish a fixed costs limit throughout the personal injury fast track, including employers' liability, public liability and occupational disease.

However, Apil withdrew from the mediation last week, when it emerged that only the costs limit would be discussed and not the entire fast-track process.

Apil chief executive Denise Kitchener told *Post*: "We were hopeful that we could discuss the process and look at its unpredictability. The disproportionately in the system is driven by behaviours — so you need to look at the process first, then the way it was costed."

Foil president Anthony Hughes, confirmed the association would continue with the mediation process but added: "There is an argument that not discussing the process is putting the cart before the horse — the process should be looked at before the horse and the cart are even put together."

The Law Society also backed Apil's concerns but confirmed that it would continue to engage in discussions at least for the time being. Director of policy Mark Stobbs said: "It is the Law Society's current policy that it should continue to engage with these discussions in order to ensure that the views of the profession are



Kitchener: withdrew from talks.

properly understood. However, we will keep this position under review."

The mediation is scheduled to end in September with Lord Jackson's recommendations to be published in his final report before the end of the year.

APIL walks out of fixed-fee talks

By Rachel Rothwell

The Association of Personal Injury Lawyers has walked out of talks on extending fixed costs in personal injury cases, in an unprecedented move for the organisation.

The Civil Justice Council (CJC) has begun a mediation process to produce industry-agreed fixed costs for all 'fast-track' road traffic accident, industrial disease, employer's liability and public liability cases worth up to £25,000.

Fixed costs are already in place for road traffic cases worth up to £10,000, but APIL opposes the extension.

The mediation was set up at the request of Lord Justice Jackson, who is putting together proposals for changing the civil justice system.

John McQuater (pictured), APIL president, said APIL had



been forced to pull out of the talks because the CJC had 'made it very clear that key principles affecting claimants and issues relating to the claims process are not for discussion in the mediation. The only subjects for discussion are the figures themselves'. He added that he was not prepared to 'play poker' with the civil justice system.

CJC chief executive Robert Musgrove said it was 'disappointing' that APIL had left the talks. He added: 'The process is necessarily constrained by the timescales of the Jackson costs review, and although this may create tensions, the facilitation process will continue with adequate representation from those who represent claimant and defendant interests.'

The walkout is the first time APIL has withdrawn from talks in this way.

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EDITORIAL

Opinion

Exit strategy a calculated risk

APIL argues that, by talking about figures before process, Jackson is putting the cart before the horse

The Association of Personal Injury Lawyers (APIL) is not given to grandiose gestures, so its decision to walk out of the mediation on extending fixed costs throughout the fast-track is significant.

The Civil Justice Council set up the talks at the behest of Lord Justice Jackson, who gave industry representatives just four months to come up with figures. Given the history of other attempts to reach similar agreements, the timetable looks wildly optimistic for such a

controversial task, particularly as many claimant lawyers (including APIL) need convincing of the case for post-issue fixed costs at all.

APIL argues that, by talking about figures before process, Jackson is putting the cart before the horse. This may well be true, but equally that was the basis on which the judge initiated the mediation, so APIL's timing seems odd.

And the association is clearly taking a risk – the talks continue, leaving others to put the claimant

side. APIL could end up lumbered with figures over which it has had no influence.

This is not the only example of Jackson giving big ideas only a short time to be realised. The Birmingham costs management pilot that began in June will surely also need longer than a few months to produce a meaningful outcome. Jackson has likened his review of costs to a trial – but will he have the evidence required to reach some safe convictions? **E**