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LINKING THE INDUSTRY TOGETHER

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CLARE LUNN

"We need to send a strong message to anyone considering making a false claim, that we will pursue these claims, and we will push for the toughest sentences and fines"

DO LITIGATION FUNDERS MARK THE DAWN OF A BRIGHTER FUTURE FOR PI?

The death knell for legal aid has long gone and for 10 years or so it didn't matter. The reliable cash flow that legal aid provided claimant personal injury (PI) law firms was replaced with the cash bonanza provided by CFA's where firms could double their money with recoverable success fees and draconian costs rules were nigh on non-existent.

Those were the good old days for claimant PI lawyers, where the most basic of litigation caseloads yielded high returns, even those with underperforming staff.

The insurance sector were the underdogs working under tight margins, low hourly rates and fixed fees.

Change came that saw the end to this disparity and the claimant sector was hit hard on cash flow and profitability as fixed costs were introduced into RTA and then extended into EL and PL. A major rule change or two later plus hard-hitting case law saw the end to recoverable success fees followed by reasonableness then proportionality arguments to slash costs further.

Banks got tougher on their risk appetite for PI lending on WIP value and cash flow management remains under their microscope.

The cost of court fees and disbursements adds to the heavy financial burden placed on the claimant sector.

Insurers draw out claims lifecycles making it harder to litigate and turn WIP to cash easily.

So where are we now as claimant lawyers are being starved of cash from all angles?

Litigation funding has made its mark in the commercial arena with Burford Capital in the high-end market and Augusta Ventures in the SME market.

The foundations of case law are being built to establish a party's right to recover interest and charges under a disbursement funding loan in *Jeffrey Jones and others v The Secretary of State for Energy and Climate Change and Coal Products [2012] EWCH 2936 (QB)* and *Angela Jade Powell v Shrewsbury and Telford Hospital NHS Trust, Court No OSY02236, 01.01.2016.*

As a result, litigation funders are now creeping their way into claimant PI. When used correctly, litigation funding can place a claimant lawyer in an advantageous position, litigating unfettered by cash flow constraints.

Add this to the Government's shelving PI reforms (for now), and I see a glimmer of hope on the horizon for the claimant sector against a backdrop of years of adversity. The future's now just a little bit brighter thanks to innovative funders and bold PI lawyers.

LESLEY GRAVES, Managing Director, Citadel Law.

THE ONLY WAY IS ETHICS

Are alternative business models and their service providers an increasingly ethical concern for the claims industry, or does our fear mask the value of culture and indeed, progress?

I was recently invited to speak at the Bar Council Annual Conference 2016 to discuss 'how to make the most of new work opportunities,' hosted by the Bar Council's Ethics Committee.

The idea that non-traditional models (such as alternative business models like ours) at the Bar are an ethical concern was interesting. For example, where some barristers see competing with solicitors as an ethical issue, it is not actually a regulatory point. What should be of concern is whether our moral code and culture is in line with both regulations and consumer needs. Can we offer them the services they need and, importantly, do our service providers share the same moral code as us?

In its research for its 'Brand Solicitor' campaign, The Law Society discovered that consumers significantly rank 'honest and honourable' behaviour by a legal entity to be of great value to them. Most clients will also trust that lawyers are qualified and insured to deliver. How many times have your clients asked to see your practicing or Lexcel certificate, or your PII documentation? Do we indeed ask this of our service providers? I expect not, but we will watch how they act, how they obtain their (and possibly your) work, and if this is in line with your ethical code. Customers are no different.

Our moral code ensures ethical decision-making and behaviour is 'as standard'. We outline our moral code clearly in our marketing – it's our first message, not an afterthought. Additionally, we won't work with those who have a low moral code. Our clients don't want that, so why should we?

If the SRA or other regulators decided to revisit their ban on cold calling, the legal profession must ask itself: is this in line with our moral code and is it what our clients want? Surely the fact that they don't is a selling point? Less morally-led partners will build 'em up and stack 'em high in this industry, but how many legal brands have succeeded in the long-term on that basis?

Our alternative business model allows us to be progressive with decision-making and have greater control over the people we employ, partner with, and instruct.

Yes, we run a legal business that challenges the status quo, but that doesn't mean we can't meet market needs and consumer expectations in a compliant manner. We invest time to ensure that our service provider partners act in the same way. We like to think we're a little like John Lewis in that respect. We don't have to worry about our business model, partners and the concept of ethics, it's in our blood.

STEPHEN WARD, Managing Director, Clerksoom & Clerksroom Direct.