

let's talk shop retail claims update

Grit expectations

Last winter was the coldest on record for 31 years and forecasters are predicting much of the same for this winter, with the coldest night ever already recorded for some regions. Now is therefore as good a time as any for retailers to review their systems having regard for the challenges that adverse weather conditions present, not to mention the health and safety risks facing staff and shoppers alike.

So at a time when many retailers want to stay open to maximise revenue from the festive season here are a few timely reminders of what you should already know:

The law

- Under the Occupiers' Liability Act 1957 you owe a duty to all those (your customers) who are invited onto your premises to keep them and their property "reasonably safe". What constitutes "reasonably safe" is a subjective, often factually sensitive question, which demonstrates why this type of claim so often litigates.
- You must ensure that both external and internal areas are as safe as is reasonably practicable for weather-related risks. Both need to be risk assessed and it is advisable to have a generic 'adverse weather policy' (AWP) with more specific internal and external analysis, tailored to the store or stores, and having regard for issues of construction, demographic and business use.

Inside

- The risk assessment should stipulate the control measures that have been put in place to safeguard or minimise the risk of incidents. For instance, the risk within the store of slipping [caused by ice or water] on a wet internal floor should correlate with the implementation of practical control measures: placing integral matting at entrances; regular cleaning of entrances; diversion of pedestrians to other entrances; and use of high visibility wet floor signs. Storage for umbrellas or other items that can bring water into the store and create slipping hazards should also be considered.

- Each listed control measure should stipulate responsibility and actively promote accountability. You should ensure that accurate documents detailing the name, signature, time and date are kept for each measure undertaken and are stored safely, so that they are readily available for inspection at a later date. Detailed records are essential to defending any claim and the requirement to complete them prevent an incident in the first place.

Outside

- The AWP should contain information such as a gritting guide identifying where, when and by whom external areas should be gritted (and it is imperative that all contractual arrangements with an external supplier are documented and easily retrievable). There should be reference to preventative measures with follow-through, such as monitoring of local weather forecasts so action can be taken in advance of very cold weather or wet conditions. Not knowing, or "it was worse than we thought", work against a good systems-based defence, given the regularity of advanced weather warnings by most reputable meteorologists and forecasters.
- Car parks and walkways need to be, "reasonably" free of ice and snow. Prevention is better than a cure and therefore well-defined, easily understood systems not only reduce the risk of an accident but enhance the prospects of a systems-based defence. The AWP should give specific thought to priority areas such as disabled/parent and baby areas, pedestrian access, car park entrances, delivery bays and petrol stations.

Drivers

- Be careful - some retailers are now considering innovative ways of the keeping their stores open and have mooted the use of specialist vehicles to spread grit in the car parks. You should consider the implications of permitting the use of such vehicles on the car parks and ensure that staff are properly trained prior to changing anything. Making radical system changes can imply an admission of previous fault.
- In addition to people slipping due to snow, ice or rain you must consider your delivery drivers. You must ensure that they are provided with a copy of the policy in respect of driving and delivery in adverse weather conditions. Appropriate PPE, for example de-icers, ice-scrapers, shovel, footwear, gloves and hi-visibility clothing, should also be provided.

Games

- Finally, watch out for weather-related games and activity. Permitting or encouraging snowball fights or any other weather related activity is bound to find you vicariously liable for any consequential injury or loss(es).

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This is no ordinary Q&A, this is an M&S Q&A
Page 2



Drink-driving and your staff/fleet drivers - your responsibilities
Page 3



Jackson: What happens next?
Page 7

Welcome

I would like to take this opportunity to thank everyone who took the time to read the last edition of our seasonal newsletter and for the welcome feedback.

Our specific thanks in this edition go to John Windsor, Head of Insurance at Marks & Spencer, for the time he has taken to respond so helpfully to our Q&A and for the insight he provides.

I hope you will find some of the practical guidance about the forthcoming winter and festive risks a helpful *aide memoir*, and that you'll enjoy our Christmas claims special.

Finally, I hope the enclosed ice-scraper will help ensure your safe journey into work in the chilly months ahead.

Best wishes for the festive season and here's to a happy, enjoyable and successful 2011.

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The complete retail solution

As a single-source legal services provider to the retail sector, claims services is just part of our complete retail solution, which includes:

- Claims
- Corporate
- Employment
- Environmental
- Logistics and supply chain
- Product liability
- Property
- Trading standards and prosecutions

Stop press

Hill Dickinson LLP has been named Corporate Law Firm of the Year at the 2010 Insider North West Dealmakers Awards.

The win comes in a year that saw Hill Dickinson acquire the Halliwells Liverpool team and Halliwells Sheffield office. The acquisition has significantly enhanced our corporate and commercial offering and broadens our presence across the North and the Midlands.

Letters to the editor

We would welcome any comments readers may have on the articles in this newsletter, or on any related topic, and would be happy to publish suitable commentary in a subsequent edition.

Please contact our editor:
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This is no ordinary Q&A, this is an M&S Q&A

1. Who are you and what do you do?

John Windsor; Head of Insurance at Marks and Spencer. Together with my two colleagues (Lisa and Kay) I look after the commercial insurances and the commensurate insured risk management requirements of M&S. We deal with all classes of insurance from Property and Casualty to Aviation and Life. As we have such a small team we rely heavily on getting great service and support from the insurance market and associated suppliers. We place huge emphasis on building strong relationships with our insurance carriers, brokers and service providers.

2. If you hadn't followed this, what would you like to have been and/or have done?

I guess opening the batting for England or scoring the goal that saved QPR from another relegation would have been enjoyable but after nearly 40 years in the insurance industry it is hard to imagine a different life.

3. Do you think that the recession has impacted upon what you do and upon claims in the retail sector generally?

Clearly in difficult financial times, there is enormous pressure on reducing the cost base. We always strive to control premia and costs but so many elements are outside of our control. In times like this, long term relationships prove to be invaluable as we all need to understand each others' positions and work at finding a way forward. We all know that accidents will happen and that claims will arise but it is incumbent upon us, our claims handlers, lawyers and loss adjusters to be vigilant in controlling and mitigating claims costs wherever possible. It is crucial that in economically challenging times companies do not cut corners on training, quality of construction, property protection or loss prevention measures.

4. What is more important, profit or brand?

Our brand is one of the strongest and most respected in the country; it has been built and protected for more than 125 years. Everything we do is driven by our core values: quality, value, service, innovation and trust. M&S has grown and prospered whilst following these principles.



John Windsor,
Head of Insurance, M&S plc

5. What do you see as your biggest challenge over the next 12 months?

The main concern must be the state of the economy. The insurance industry is pretty mature and we continue to see adequate and, in some classes, growing capacity. Perhaps there will be some insurer and broker consolidation, and other issues like Solvency 2 and increases in IPT will have an impact. In the retail world, we have been facing the same kind of risks for many years. Climate, terrorism, cyber - all present exposures and challenges. Specifically, as our company grows we, and here I include insurers, brokers and service providers, must ensure that we keep abreast of all those developments.

6. With whom would you least like to be stuck in a lift and why?

With a view to avoiding litigation I would prefer not to answer this question.

7. What is the strangest claim you have received of all time?

There have been many ranging from bodily fluids, grapes deliberately placed on the floor, squirrels with attitude to disabilities miraculously cured by CCTV!

8. What is going to be the biggest seller this Christmas?

I don't have a crystal ball but I have a feeling that the answer might be turkeys!

9. What was your biggest mistake and what did you learn from it?

Small mistakes or oversights are often the ones that cause the biggest problems. Ignoring detail or taking things for granted can have enormous repercussions. It is also important never to take people for granted and to get in there and 'kick the tyres' from time to time.

10. What is your proudest achievement in your career?

On a professional basis the answer must be heading up the insurance function for such a great and iconic company as M&S.

Drink-driving and your staff/fleet drivers - your responsibilities

The adage “out with the old and in with the new” may soon take on new meaning for businesses during the festive office party season. The advent of the Corporate Manslaughter and Homicide Act 2007 has ushered in new and greater responsibilities for businesses calling time on alcohol-fuelled Christmas fun (well, to an extent!)

There have yet to be any complete prosecutions under this relatively new legislation but a business or organisation can be guilty of an offence if:

“the way in which its activities are managed or organised causes a death

and

this amounts to a gross breach of a duty of care owed to the deceased”.

This impacts on the extent of the duty a business owes its staff and other road users and is especially of relevance where driving is required as part of the day-to-day business operation.

If an employee at a festive party is encouraged to consume alcoholic beverages when required to drive within hours of the party and a drink related accident follows – the business could be at risk of prosecution at board level. Punishment can include a fine and/or imprisonment. An estimated 80 deaths per year are caused by drivers under the drink drive limit but who still have a significant amount of alcohol in their blood. These drivers and those only slightly over the limit have often been caught unaware following drinking the previous night and there are specific campaigns by the police this year to target these drivers.

The risks and dangers of alcohol-related misery increase during the festive season and all employers can and should take practical steps to ensure that they and their employees do not contribute to the risks and statistics accordingly.

When is it safe to drive after drinking alcohol?

The legal drink drive limit is 35mcg of alcohol/100ml of breath (80mg/100ml of blood). Approximately 5 units of alcohol consumed one after the other would cause someone's alcohol content to reach this level but varies considerably depending upon:

- sex, height and weight
- type/quantity alcohol consumed
- start and end times of drinking

When it is safe to drive after drinking depends considerably on the factors above but the ‘rule of thumb’ is that an average person metabolises one unit of alcohol per hour, a ‘unit’ being 1/2 pint beer, single spirit measure or 125ml glass wine. Appropriate and diligent advice to employees must be that it is safest to drive without alcohol in their system and many employers do have a zero tolerance policy toward driving when under the influence of any alcohol, regardless. Studies have shown that any amount of alcohol can impair a driver's reaction time, thereby increasing the risk of an accident accordingly.

Know your limits!

Male

An 80kg/12.5 stone male 5'11" tall drinks six pints of Stella (above average alcohol content at 5% ABV) from 8pm to 11pm. At midnight his Breath of Alcohol Level would be twice the legal limit for driving at 70mcg/100ml breath. [For six pints of Stella substitute two bottles red wine or 17 spirit singles].

When is he able to drive?

Average metabolism (7.8mcg/100ml breath per hour)

By 4:30am he should be down to the legal limit to drive (35mcg/100ml breath).

By 9am his system should have removed all alcohol.

Below average metabolism (4.3mcg/100ml breath/hour)

By 8am he should be down to the legal limit to drive

By 4pm his system should have removed all alcohol



Female

A 70kg/11 stone female 5'9" tall drinks five pints of Stella over the same period. At midnight she would be more than twice the legal limit for driving at 76mcg/100ml. For the five pints of Stella substitute 1.5 bottles of wine or 14 spirit singles.

When is she able to drive?

Average Metabolism (7.8mcg/100ml breath per hour)

By 5:15am she should be down to the legal limit to drive (35mcg/100ml breath)

By 9:45am her system should have removed all alcohol.

Below Average metabolism (4.3mcg/100ml breath/hour)

By 9:30am she should be down to the legal limit to drive.

By 4:35pm her system should have removed all alcohol.

So what should employers do?

At the risk of sounding like a certain Mr Scrooge or Mr Grinch, please rest assured that myself and my colleagues at Hill Dickinson will all be painting the town red this Christmas. This article is not about avoiding a visit from the ghosts of Christmas past, present and future, it is about looking after your workforce, and protecting them, your reputation and brand. All it takes is a little extra planning. For instance:

- Plan festivities to avoid essential next day driving i.e. on a Friday/Saturday or consider a bonus half day holiday the next day; ensure teams liaise over party dates to provide cover for one another.
- Avoid bars which encourage binge drinking.
- Provide transport to take people home (funded by the savings on the bars and from the costs saved in legal fees!).
- Encourage and incentivise the avoidance of alcohol altogether when driving is contemplated the next day.
- Adopt a similar stance to driving whilst tired.

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You've been framed Christmas special

According to the Royal Society for the Prevention of Accidents more than 6,000 people will end up in hospital on Christmas Day. During the 12 days of Christmas, it is anticipated that more than 80,000 people will visit A&E. Below are just some of the Christmas crackers we have successfully handled for retailers in recent years.

Elf and safety

The claimant was accepting a home delivery of Christmas shopping. The delivery driver who, in full festive spirit, had dressed up as an elf, was pulling a tray from the van which had become stuck due to a rather large turkey. The tray was dislodged, but at a cost. The turkey fell out of the tray and the claimant, who had taken it upon himself to assist the driver to unload the shopping, was struck on the head by the frozen bird. A denial of liability was maintained and the claimant discontinued, but the case emphasises the importance of ensuring that all delivery vehicles are appropriately loaded and that employees do not accept help from customers, however well-intentioned that help may be!

Christmas shopping trip

An elderly customer was shopping in the clothing department when (she alleged) her skirt caught on a Christmas tree decoration causing her to fall to the floor and suffer fairly serious injuries. She alleged that the tree had been placed in the middle of the aisle and was moved following the incident. CCTV footage proved otherwise but without that evidence we would have needed to prove a safe system and methodology for our client's decorative displays. This case also underlines the importance of CCTV retention and early release.

God arrest ye (not so) merry gentlemen

A false imprisonment claim arose when two male shoppers (who happened to be off-duty police detectives) were stopped when using a giant blue IKEA bag to carry a bundle of unwanted clothes and a wad of store vouchers. The pair felt aggrieved and promptly claimed. We successfully applied to strike the claim out, on a technicality that the police had made the decision to arrest, but what this case illustrates is the importance of taking a view prior to stopping a customer. You can challenge with or without security but any restriction of liberty (perceived or not) opens the door to the tort of false imprisonment.

Cold turkey sandwich

A claim arose from a customer who alleged that the carrier bag which she had used to collect and take away her Christmas turkey split as she walked along her driveway. The turkey landed on the claimant's foot, causing her to sustain a fractured toe. The claimant eventually discontinued. We were able to evidence the testing and quality of the carrier bags but the case emphasises the importance of promoting that customers use their own bags (not only for environmental reasons) and the importance of asking the customer whether they need assistance with their packing (supported by a clearly defined and understood policy). Further, the claim illustrates the need to ensure that all staff are trained how and when to properly pack all items.

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Success stories

DisCovered

Working for a leading supermarket chain we were able to identify historical employers' liability cover for a long since disposed of dairy business through deployment of our 'DisCover' product. The identification of insurers allowed the client to secure indemnity and the claim eventually settled for in excess of £75,000, a cost which would have fallen to the client to settle.

Watch out for more details of 'DisCover' in our spring edition.

Slammed to rights

Working with a home delivery company we were successful in influencing the local police force to bring a criminal prosecution against the perpetrators of a 'slam on' motor accident. Whilst the claim was successfully repudiated, the police initially declined to prosecute. Our client was determined that the wrongdoers should be brought to justice and threatened a private prosecution which resulted in the police reconsidering their approach - a powerful message to all would be fraudsters!

Clean sweep

Working with a leading retailer we have introduced an initiative to review indemnity clauses with their contracts for subcontractors. The revised contract wording will provide a strong base from which to redirect claims cheaply and easily where the accident has arisen as a result of the non-performance of cleaning contractors across all parts of the business.

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Equality Street

The law on discrimination in the workplace has developed considerably in the last 40 years. This year it has culminated in the coming into force of the Equality Act, which has consolidated anti-discrimination legislation into one Act, covering all forms of unlawful discrimination, whether on the grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, and sexual orientation.

As well as consolidating the existing law, the Equality Act offers additional protection for workers and service users, meaning that all businesses need to be wary. Some of the most important changes include:

- Those “perceived” to have a protected characteristic are now protected by the Act, e.g. a male who is subjected to abuse because his colleagues believe he is homosexual (whether or not he is).
- The protection of those discriminated against because they are “associated” with someone with a protected characteristic e.g. the carer of a disabled person.
- Potential liability for employers who fail to take reasonable steps to stop their workers from being harassed by third parties.
- Additional protection for disabled employees (to tighten a loop-hole that had emerged in the old Disability Discrimination Act).

- Potential liability for employers who ask health-related questions before making any offer of employment, unless they can prove that the questions were necessary for one of five permitted reasons.
- Contractual provisions requiring employees not to disclose details of their pay to their colleagues will be unenforceable in certain circumstances.

It is therefore critical that all employers:

- Review their policies for dealing with third party harassment (potentially as part of a review of their statutory bullying and harassment policies generally).
- Review their interview and recruitment policies and practices ensuring that suitable training is given where and when needed (possibly alongside age discrimination).
- Review their welfare and equal opportunities policies and raise awareness around what is acceptable conduct (with a policy in force accordingly).

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Bribery - where is the risk?

Did you know that the Bribery Act (which will come into force in April 2011) will make it a criminal offence for businesses to fail to prevent bribery within their organisations? Further details will appear in the next edition. If you have any questions or concerns in the meantime, please contact us.

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This is not a drill

Compared to the half a million pounds in fines and costs imposed on New Look following the fire safety prosecution earlier this year, steps to implement suitable and sufficient protective fire safety measures are good value at almost any cost.

New Look staff at first ignored a fire alarm that turned out to be genuine – as the fire spread, so did panic. Although everyone escaped safely, some stumbled in the rush and others had to dodge glass falling from shattered windows. Risk assessments and training were inadequate, and the judge described the case as “a disaster almost too awful to contemplate”.

The case was a clear example of why the strict requirements of the Regulatory Reform (Fire Safety) Order 2005 matter in practice and sounds a clear alarm bell for anyone flouting the regulations; the courts will not flinch from imposing fines that reflect the magnitude of the potential harm, whether they come to light after a fire or as part of a routine inspection.

Most duties under the order will be familiar to those in health and safety – to risk assess, to take all reasonably practicable steps to ensure safety, to train – although there are additional requirements, for example, as to fire safety/fire fighting equipment and escape routes that need to be considered with proper care.

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Happy Christmas? Stress in the workplace; not everyone is full of Christmas cheer

With Christmas festivities now upon us, excessive pressure of work might seem an unsavoury or irrelevant topic. The reality is rather different with the retail sector reaching the pinnacle of ‘ramp up’ and employees striving to meet frenetic, ever growing targets and deadlines. Many thrive on the adrenalin rush of the sector’s relentless challenges, but keep a wary eye out for those who will allege mental ill-health arising out of undue workplace stress.

There are pressures in all work places and yet there are no occupations which should be regarded as intrinsically dangerous to mental health. The test is the same whatever the employment. There are no special control mechanisms applying to claims for psychiatric (or physical) illness or injury arising from the stress of doing work an employee is required to do.

To assess what an employer could and should do requires an analysis of the specific situation. However, pre-existing knowledge of the sector combined with early operational and legal analysis will be invaluable in stemming or removing a problem. Our extensive knowledge of the retail sector reveals on the one hand stresses and demands peculiar to meeting public and corporate expectations as well as highlighting the overriding and increased risks to health of employees when managing work force members and the extent of duties in an economic down turn.

What are the tell tail signs of impending harm to the health of an employee?

A combination of some or all of the following:

- Recent frequent and prolonged absences from work
- Uncharacteristic behaviour
- Complaints or requests for help
- Complaints or warnings from others
- Apparent particular problems or vulnerability

What steps can assist the employee and the company?

- Confidential advice service
- Counselling
- Occupational health referral
- Re-assessment of duties
- Break from work
- Stress audits
- Prior risk assessment
- Prior reference to HSE guidance

Lead cases have involved O2 and Intel Corporation. The cases reveal the need for Companies to recognise and action instances of extreme pressure and serious impending illness. Foreseeability will rest upon what the employer knows (or ought reasonably to know) about the individual employee. Due to the nature of mental disorder, it is harder to foresee than physical injury, but may be easier to foresee in a known individual than in the overall population.

Employers are entitled to assume that an employee can withstand the normal pressures of the job unless they know of some particular problem or vulnerability. A known or recognised problem must be actioned but where in each case is the line drawn?

An employer is generally entitled to take what he is told by his employee at face value, unless he has a good reason to think to the contrary. Wide ranging enquiries would not be triggered unless there is an indication of impending harm to health and such problems arising from stress at work must be plain enough for any reasonable employer to realise that he should do something about it.

Effective systems and communication problems should root out risk situations. The overall size and scope of the employer’s operation would only normally be relevant to issues such as redeployment. To be on the right side of this type of claim it is important to weigh in the balance issues such as whether or not the workload for the individual is much more than is normal for the particular job, is the work particularly intellectually or emotionally demanding for this employee, are the demands made unreasonable when compared with those made of others in the same or comparable jobs, are there signs that employees are suffering harmful levels of stress and/or are there any abnormal levels of absenteeism in the same job or department? A close eye on those issues combined with the effective functioning of management, HR and occupational health disciplines should ensure a content and happy workforce through Christmas and far beyond!

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Jackson: What happens next?

Many of you will recall that on the back of Sir Rupert Jackson's report on costs and Lord Young's condemnation of claims management companies we were forecasting further attack from the Government, who remain committed to tackling excessive legal costs arising from the compensation culture.

On 17 November Justice Minister Ken Clarke released two consultation documents: first, a set of proposals to progress the implementation of Jackson LJ's recommendations; second, the reform of Legal Aid (Community Legal Funding).

Major funding and procedural reform

The proposals for the reform of civil litigation funding and costs in England and Wales are split into two main sections, a set of proposals based largely on Sir Rupert's recommendations that will require legislation to implement (such as CFA reform) and a section updating the implementation of those changes that can be achieved via judicial intervention or those which require further consideration.

Problems with the CFA regime have long been identified and it is recommended that the recoverability of success fees is abolished. This will dramatically reduce the cost liability of paying parties, introducing some control and accountability measures as claimants' take a greater interest in what costs are actually being incurred.

To counter this proposal a 10% increase in general damages has been mooted; that success fees be capped at say 25% of damages (excluding future care/loss); and a regime of qualified one way shifting ('QOCS') be introduced. The proposed QOCS regime has merit when considered alongside the proposal to abolish the recovery of ATE premiums, but this would prevent a defendant from recovering its costs from claimants, meaning that claimants might only need cover for any shortfall on their own costs and disbursements. An alternative ATE premium solely for disbursements could still be recoverable if the claimant could prove there was no other way of funding them. This, we believe, will only lead to a new costs war with defendants keen to investigate the ability to pay disbursements separately to avoid any ATE liability at all. If this concession is to be confirmed it will need to be carefully regulated.

One key point for union interest is that

if the recoverability of ATE premiums is abolished then this will also apply to premium equivalents or notional premiums. This will have a large impact on the ability of trade unions to fund claims and could affect membership and claims generally.

The Part 36 regime is also subject to scrutiny and rightly so with it having been subject to some challenging mediation/ADR case-law in the last few years. The Government want to reform the rules to encourage settlement. It is felt that the current regime (a misconception in our opinion) is more favourable to the defendant than to the claimant. Again there are proposals relating to enhanced damages awards for the successful claimant.

Both fast track fixed costs and referral fees are also under review and remain subject to much debate as might be expected. Fixed costs are desirable where they create certainty and referral fees are currently subject to an ongoing separate consultation where it has been noted that they can add circa £900 to the cost of a case, approximately 15% of the overall costs, with no tangible benefit.

The proposals accept that both areas require further consideration but the following commitment is noteworthy: "The Government aims to extend the [fast track fixed costs] scheme by April 2012" to personal injury claims and low value clinical negligence claims. This said, the proposals include an "escape clause" for certain types of cases which would open up the potential for a new costs war over conduct in such cases. The major recommendations have survived with just a hint of spice added here or there.

The proposals to dramatically reduce the scope of legal aid have already received significant press and require little further comment; one truly remarkable proposition arising is the suggestion that interest generated by client funds in client accounts is used to offset the costs of legal aid.

The Government is "seeking to strike the

right balance between access to justice for those who need it with ensuring that costs are proportionate and that unnecessary or frivolous cases are deterred".

Despite the cynicism that surrounded Sir Rupert's final report we were always confident that the report would offer some reform of interest to the taxpayer.

What's next?

The fact that Sir Rupert has been given some time off from sitting to oversee the reforms and that quite quickly a number of pilot schemes were put into place evidences how seriously these proposed reforms are being taken.

The consultation and debate runs until 14 February 2011, with a further report due in the Spring. We would be pleased to discuss with you any submissions you would wish to put forward in response to the questions raised or in order to provide you with further information

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MOJ – 6 months on

It is now more than 6 months since the launch of the Ministry of Justice (MoJ) reforms which were designed to streamline the compensation system in low value Road Traffic personal injury claims.

These reforms also introduced an online portal to accelerate the claims settlement process however, as mentioned in our last edition, the site was plagued with problems as users struggled to gain access, even months after the official launch. This is now settling down as users familiarise themselves with the systems and procedures although issues with the Portal continue to hamper smooth operations forcing workarounds to be developed.

We are now starting to see some of the promised cost savings as progressively more valuable claims make their way through the system. We expect the savings to become more noticeable and more frequent as the more complex and

higher value claims are completed (although in reality this will not become commonplace until the first anniversary of MoJ). The reason for this is that the structure of the costs calculations mean that costs savings are only made on claims that exceed £2000.00 (once success fees and Vat are added). Since the claims that settle earliest are generally the lowest value ones, it follows that we will not see savings in the higher value cases until they start to settle over the next six months and beyond.

We have begun to see certain strategies being adopted by claimant solicitors that take advantage of the added administrative costs and complexities of the new arrangements for smaller value claims. We believe that the first valuation put forward is frequently inflated as any attempt to contest it will greatly increase settlement time and attendant costs for the defendant thus incentivising settlement, even on less than favourable terms.

For now, we remain at the early stages and by 12 months, we will know a whole lot more.

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Did you know?

- 9.7% UK household expenditure relates to food & drink. This compares to 22.1% in 1969
- 37% of FMCGs are sold on promotion/discount
- The ONS reported a somewhat modest increase of 2.6% in retail sales year on year to November
- 2.9 million people are employed in the Retail sector within the UK
- Retailers generate 8% of UK GDP
- 100 retailers have already signed up to the BRC's On Pack Recycling Label (OPRL) initiative

Sources: www.brc.org.uk
www.kantarworldpanel.com

Coming up in the next edition...

- Spring cleaning
- Saving you money, making you money - ULR
- Trend setters: what's big and what's not in 2011
- Jackson - what actually is next and much much more

If you would like to know more about our retail claims services, or any other services we provide, then please visit our website or contact:

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About Hill Dickinson

The Hill Dickinson Group offers a comprehensive range of legal services from offices in Liverpool, Manchester, London, Chester, Sheffield, Piraeus and Singapore. Collectively the firms have more than 1,300 people including 190 partners.

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