



LAW SOCIETY OF SOUTH AFRICA

MEDIA RELEASE

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For immediate release

LAW SOCIETY ADVOCATES AGAINST DIRECT PAYMENTS BY RAF

The Law Society of South Africa (LSSA) has advised the Road Accident Fund (RAF) that the introduction of direct payments to motor vehicle accident claimants by excluding attorneys from the system will not necessarily reduce fraud or improve its service delivery.

'The implementation of a direct payments model by the RAF and the consequential removal of attorneys from the system will effectively deny injured road accident victims access to justice, legal representation and access to the courts,' say LSSA Co-Chairpersons Nosidima Ndlovu and David Macdonald.

The Co-Chairpersons stress that, for many years, the LSSA has advocated that the RAF notify a claimant immediately upon effecting payment that the payment has been made to his/her attorney, a procedure that is common practice in class actions in other jurisdictions.

The LSSA's Motor Vehicle Accident Committee last week responded to the RAF's public invitation to comment on a direct payment system. The committee pointed out in its submissions that the implementation of the direct payment model will have a negative effect on the public, particularly on illiterate or unsophisticated litigants who may be unable open bank accounts to receive electronically transferred funds or to bank cheques. Unsophisticated claimants are often not necessarily equipped to invest the payments received, and attorneys are often called on to advise clients in this regard.

The LSSA has highlighted the following:

- In terms of the current system, where fault is the basis of compensation, most if not all claims are dealt with on a contingency basis. No legal representative would be prepared to take a claim on risk, which often calls for a substantial financial investment, without the assurance that if successful, the proceeds of the claim will be paid to the legal representative to enable that person to recoup his/her expenses and raise a fee for the time invested in pursuing the claim.
- Under the current system, most major medical aids are prepared to fund their member's costs relative to an accident as against an undertaking from the member's attorney to refund any costs recovered. On this basis they await the outcome of the member's claim, rather than pursue a 'supplier's' claim. If payment is not made to the attorney, this system will collapse. Medical aids will either pursue 'direct' claims, thus flooding the RAF with thousands of individual claims, or the medical aid will decline to meet the member's costs, to the obvious detriment of the member.
- In virtually every existing claim in the system, the basis upon which an attorney accepts the instruction is that the attorney is irrevocably nominated as agent for the receipt of the proceeds of the claim. This is the underlying *contract between attorney and client*. Even if the RAF is 'empowered' by regulation to by-pass the attorney, this would not negate a contractual relationship between attorney and client, and payment not in accordance with the contract would not discharge the claim. Any attempt to legislate against this would be an undue interference in the right of the public to contract freely and to appoint a legal representative of choice.

As regards the fact that the RAF claims that a direct payment system will reduce fraud, the LSSA MVA committee pointed out that fraud may involve *internal and external agencies*. Under a direct payment system, 'internal agencies' may be even more difficult to identify and eliminate. An assumption that claimants commit fraud only because they are aided and abetted by attorneys is fallacious and, to say the least, disparaging of the entire attorneys' profession. The LSSA stresses that attorneys are identifiable and accountable and, if found by their law society to be guilty of fraud, there is a reasonable prospect by the aggrieved client of recovering his/her monies from either the attorney concerned or from the Attorneys Fidelity Fund.

According to the MVA committee, the assumption that removing attorneys from the system will eradicate or even reduce fraud is, with respect, wishful thinking. The committee pointed to the widespread fraud in the social welfare system where payments are made 'direct' to recipients and where attorneys are not involved.

As regards service delivery, the LSSA MVA Committee recommends that a system needs to be devised whereby accidents are investigated – perhaps in conjunction with the South African Police Service, or in-house assessors – as soon as they happen. This would also go a long way to curtailing fraud.

Editor's note:

The Law Society of South Africa brings together its six constituent members – the Cape Law Society, the KwaZulu-Natal Law Society, the Law Society of the Free State, the Law Society of the Northern Provinces, the Black Lawyers Association and the National Association of Democratic Lawyers – in representing South Africa's 17 000 attorneys and 4 500 candidate attorneys.

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